Studii Legalis Ra

OR,

DIRECTIONS

For the Study of the

LAW,

Under these Heads:

The { Qualifications for / Nature / Means / Method / Time and / Place } of the Study.

By W. P.

In hoc gaudeo, aliquid discere ut doceam. Sen. Ep.
Rectum iter quod sero cognovi, & lassus errando viam aliis monstro. Ib.

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UMI

UMI

TO THE STUDENTS OF THE Common Lawes OF ENGLAND.

Books, such as are worthy the name of Books, saith the Lord Bacon, *ought to have no Patrons but Truth and Reason; I hope I may justly lay claim to both, in this Treatise. But* De. aug. Scient.

the first having for a long time past been forced to the Rear, and Error leading the Van, had the fewest followers; the latter through Ignorance and partiality was in a manner lost: so that what was formerly limited to the Cretians, *might have been well applied to this part of the world also in these latter times, that they were* Κάκα θηρία, Brutes, *and that evill too: and I doubt there is too much of that brutishness still remaining. I thought it therefore my safest course, with his Lordships leave, to crave likewise your Patronage hereof. Your*

Patro-

Patronage, I ſay, of whom it may be ſaid in compariſon with my ſelf (Si parvis licet componere magna) *as* Tacitus *reports* Auguſtus *once ſaid of* Lepidus *and* Aſinius, Mareum Lepidum (*ſaith he*) dixerat capacem ſed aſpernantem, Gallum Aſinium avidum ſed Minorem. *Thoſe that are able to undertake this task deſpiſing it and unwilling; I willing, but not able: Therefore do wiſh the ſame perſon, whoſe Abilities and Experience are anſwerable to the work (of whom we might ſay, as the ſame* Auguſtus *ſaid of* L. Arun- Lib. 1. Annal.

Aruntius, Quem dixerat, *saith* Tacitus, non indignum & ausurum) *would take it in hand.*

These few Observations being the Products Temporis subsecivi (*as* Cicero *cals it*) *the leavings of business, lying by me in loose papers, partly out of desire of profiting others, but I confess most of all out of the importunity of my Friend the Stationer, who desired a Piece of this nature, I was content to draw them into this method (if it deserves that name) you now have them in.*

Mr. *Hen. Marsh.*

Of what importance Books of

of this nature are, I leave to your self to judge: for I am confident, your selves being Judges, there is no small time spent by Students, at their first entrance on this Study, in searching what and how to read: here they have both in some measure briefly shewed them, that they may have no Remora's and lets in their wayes, but cheerfully proceed in their Studies. Galen wrote a Book only to teach the method of reading his Works. Paulus, Happerus, Gribaldus, Ant. Rasa, and others, have not been wanting in their directions for the

study

ſtudy of the Civil Law; but of ours, except Sir John Doddridge *and Mr.* Fulbeck, *there hath not one trod this path. The firſt of whom, if death had not prevented, doubtleſs had produced a Piece worthy of ſuch a learned Man: but therein he hath handled only, though indeed fully, one part of Study, to wit, the collecting of Principles and Maximes. The other,* Mr. Fulbeck, *leans too much upon the Civil Law; and where he touches the Common, he ſhews rather the matter then method of Study: but neither wants its worth.*

Theſe

These I confess want much both of the matter and method of what might be done upon this subject; yet my willingness of contributing any thing to the advancement of this Science, though but a Mite, doth claim your favourable construction of my pains; remembring the old saying--**Est voluisse satis,** *and be they never so despicable, yet there is nothing of so little regard, but hath somewhat of worth: for* **Inest sua gratia parvis.** *But I despair not of some profit hence to those that it is intended for, the* **Tyrunculi** *of this Study*

Study (for higher I do not aim.) From whom I hope to receive a favourable acceptance of my labour, who have to my detriment gone somewhat out of my own, to no other end, then to put them in their way. Valete, & dum de vestris studiis benemereri conor, æqui boniq; hæc τὰ μέρα consulite.

Gr. Inne.

W. Phillips.

Studii

Studii Legalis Ratio:

OR,

DIRECTIONS

For the

Study of the LAW.

CHAP. I.

Of the Students Qualifications.

MAny applying themselves to the Study of the Law, without due and serious Consideration of the Qualifications such a Student ought to be furnished withal,

have missed of that *content* and *desire* which is treasured therein; and in stead thereof, have met with *trouble* and *vexation of spirit*; judging it to be *Studii, non sui morbum*, an inseparable Incident to this Study: thinking it unattainable and full of difficulty, because they are not qualified for the same; according to that of *Seneca*, *Multis rebus inest magnitudo, non ex natura sua, sed ex debilitate nostra*: [Many things are difficult, not in themselves, but because of our weakness.] And certainly it can be no otherwise where any undertake a Profession *invita Minerva*, (as we say) when both their Genius and Qualifications check them in their choice. For those things delight every man, and those onely, which are Οἰκεῖα τῇ φύσει, as the Philosopher speaks, suitably fitted and accommodated to their Genius and frame of Nature.

Arist. Eth. l.10.c.7.

That our Student therefore may finde the pleasure thereof answerable to his expectation, this Study must be his choice upon mature deli-

beration; following *Seneca's* advice herein. *Considerandum est utrum spiritui tuæ tua agendis rebus, an otioso studio contemplationique aptior sit.* And this choice is matter of great difficulty, wherein a man carrieth himself diversly, and wherein he shall finde himself hindred by divers Considerations, which draw him into divers parts, and many times hurt and hinder one another. Some herein are happier then others, who by the goodness and felicity of Nature have known both speedily and easily how to chuse; and by a certain good Hap, (or rather Providence) without any great Deliberation, are as it were wholly carried into that course of life which doth best befit them. Others not so fortunate, who failing *ipso limine*, in the very entrance, and wanting the Spirit or Industry to know themselves, and in a good hour to be re-advised how they might cunningly withdraw their Stake in the beginning of the Game, are in such sort ingaged, that they cannot without shame recal themselves from

that which they have as wilfully as inconsiderately undertaken; but incure much trouble in persisting therein, and so are constrained to lead a tedious and wearisome life, full of Discontent and Repentance; and, which is worst of all, lose both Time and Labour, spend their Goods, and beat their Brains, without any either profit or delight; and after a long time spent therein, know not how to give a reason why they are rather for this than any other Calling, except because their Ancestors professed the same, or that they were unawares carried unto it: which made *Seneca* say, *Pauci sunt qui consilio se suaq; disponunt, cæteri eorum more qui fluminibus innatant, non eunt, sed feruntur:* [Few advisedly dispose of themselves or their own; but like such as swim in Rivers, do not go, but are carried.] Whereas every Science requires a special and particular Wit, and Habilities, according to which every man ought to steer his course. *Hippocrates* saith, That Mans Wit holdeth the like proportion

on with Sciences, as the Earth doth with Seed; which though of her self she be fruitful and fat, yet it behoves to use advisement to what sort of Seed her natural disposition inclineth; for every sort of Earth cannot without distinction produce every sort of Seed: answerable to that of the Poet,

Nec tellus eadem parit omnia, vitibus illa Ovid.
Convenit, hæc oleis, hic bene farra virent.

This Choice being so difficult, that our Student may not herein miscarry, *Nec quicquam sequi quod assequi nequeat*, he must make a strict inquiry into these two things; his Nature, and the nature of the Study. That his Nature, that is, his Capacity, Temperature, and whatsoever he excelleth in, be answerable to the Study. *Idquemq; docet quod est suum maxime, sic faciendum est, ut contra naturam universam nil contendamus, ea servata propriam sequamur*: [E-

very man should undertake that Calling which his nature lays most claim to, and attempt nothing dissonant to the same; but follow the suggestions and frame of his own nature.]

The Knowledge and Qualifications requisite in our Student, are as the Waters; some descending from above, some springing from beneath: the one informed by the light of Nature, the other inspired by Divine Revelation.

That from above, is the knowledge and *fear of God*, which the wisest of men saith is the *beginning of*
C. Catiune *wisdome*. *Hac sit prima ratio, ut Juri daturus operam, ne (quod dicitur) impingat in limine, primum omnium numinis divini auxilium precetur, & in illius gloriam suorum studiorum finem seu ad scopum referat:* and wherewith is necessarily conjoyned the true Worship of God, that which meer Nature (as corrupt as it is) in some measure inculcates. For all the world acknowledge a Deity; and Piety sways them so, that though they un-

unwillingly submit to their Superiours; yet rather then they will be without a god, they will worship a Stock or a Stone: Therefore saith *Cicero*, *Nulla gens neque est tam immanis, neque tam fera, quæ non, etiamsi ignoret qualem habere deceat deum, tamen habendum sciat.* Tusc. Qu. l. 1. And *Seneca* saith, *Nulla gens adeo extra leges est profecta, ut non aliquos deos vroedat.* Whence those Fictions of the Heathen Poets touching their *Elizium* and fields of happiness, for men of honest and well-ordered lives; and places of torment for those that do any way neglect the bonds of their Religion. Neither hath Nature wanted arguments to inforce them hereunto, as appears by the writings of the very Heathens. For as God hath made all things that are imperfect, subject and subservient to the more perfect, as the Elements to mixt bodies, mixe bodies to plants, plants to Brutes, Brutes and all things else to Man; therefore very Reason, and the order of Nature will tell us, that we ought to serve God, who is

Perfection in the abstract. Nor is this service formal, more of custome then duty. Therefore did the *Romans* place this in the front of their Laws, as of greatest importance: *AD DIVOS ADEUNTO CASTE, PIETATEM ADHIBENTO.* And the same *Cicero* saith, *Cultus deorum optimus est idemque castissimus, & sanctissimus, plenissimusque pietatis, ut eos semper pura, integra, incorrupta, & mente & voce veneremur.* And certainly this Piety becomes one of this Profession (if not more) as much as any other whatsoever, Justice being the end of the Law; and *Cicero* saith, *Pietas justitia quædam est adversus Deos.* [Piety is but justice towards God.] It is not onely a vertue, but the chief, saith *Aristotle*; it is the foundation of Fidelity and humane society, without which the world would fall into Confusion. *Pietate sublata, fides etiam, societas humani generis, & una excellentissima virtus justitia, imò omnis probitas tollitur.* This brings along with it a quiet and

Cic. l. 1. de Nat. Deorum.

and perceable conscience, a mind calm and composed, fit to encounter with the greatest difficulties that in this Study may be met withal.

The knowledge and qualifications from below, are informed by the light of Nature, as either Intellectual, or Moral. The Intellectual are subdivided into Inherent or Innate and acquired. The qualifications intellectual and innate, are four in number, divided according to the Ends whereunto they are referred; for mans labour is either to invent that which is sought or propounded, or to judge that which is invented, or to retain that which is judged, or to deliver over that which is retained. So that they are four; that is to say, the faculty of Inquiry or Invention, of Examination or Judgement, of Custody or Memory, of Elocution or Tradition.

3. The faculty of Invention is very requisite in our Student; which springs out of sharpness of wit, and clearness of apprehension. Without this hability, none can be fit for this *Croke* 279. *Peard* and. *Johnes*.

Profession; for a clear Apprehension
makes the minde receive the right
and distinct Notion of the thing re-
presented, as the clearness of a glass
serveth for the admission of a more
exact Image of the Face that looks
upon it; whereas if it be soiled or dim,
it rendereth either none, or an imper-
fect shape. Without this, none of the
particular Cases can be throughly sif-
ted, or sufficiently set forth. For con-
sidering the depth of knowledge re-
posed in the Laws of this Land, and
that cases of much conformity and
resemblance daily happen; sharpness
of Apprehension is necessary, not
onely for the understanding of one,
but also upon circumstances of mat-
ter to espie a difference in the other,
and upon any suddain occasion to be
able to reply to an adversaries unex-
pected Objections; to understand his
Clients case at first opening, the drift
of his adversaries reasons at the first
urging, and likewise readily to in-
vent and fitly to apply his provided
arguments. If this faculty of Ap-
prehension faileth, saith *Hippocrates*,

all

all other diligences are loſt; for it is the Inlet of knowledge. But it ought to be moderate: for too much ſharpneſs of Wit is prejudicial to Judgment and Memory: *Nihil ſapientiæ odioſius acumine nimio*: [Nothing is more dangerous to wiſdom or judgement then too much ſharpneſs of wit] for this over-ſharpneſs riſeth out of a hot and drie brain, which is of a contrary temperature to Judgement and Memory. For, ſaith one, experience ſheweth, that they that excel in Imagination and ſharpneſs of wit, are ſick in Judgement and Memory, and held for fools and frantick perſons. And the reaſon hereof is, becauſe the great heat that ſerveth the Apprehenſion, conſumeth both the moiſture which ſerveth the Memory, and the ſubtility of the ſpirits and figures which ſhould be in that drineſs which ſerveth the judgement; and ſo it is contrary, and deſtroys the other two.

The faculty of Examination or Judgement, as Sir *John Doddridge* ſaith,

faith, is almost alone sufficient to make a ready and able Lawyer. This solidity of judgement teacheth to weigh and try the particulars apprehended, and to sever for use the precious from the vile. For knowledge lies in things, as Gold in Mines, or as Corn in the Straw; when by diligent inquiry after it, we have digged it up, and threshed it out, we must then bring it to the fire and fan, to give it us purified from dross and levity. Hereby is our Student inabled to perceive what is true and what is false in every controversie; not to be deceived or inveigled, nor to be inconstant in opinion; well to deliver things conceived, and well to judge of them; which is the best part of a Lawyer. The art of Judgement excels the former herein, for that is like a picture in Marble, that is ingraven with difficulty, but is lasting; the other like a writing in the Sands, apt to take, unapt to keep; soon hot, soon cold. And this faculty of Judgement springeth out of a cold temperature of the brain;

where-

wherefore *Aristotle* saith, that such as inhabit hot Countries are more solid and advised then those that are born in cold Regions, because the excessive heat of the Country fretteth and consumeth the natural heat of the brain, and so leaves it cold; whereby man becomes to be of good judgement: whereby it appeareth that quickness of wit and soundness of judgement, are two contrary powers. And though our Student be defective in one of these, as of necessitie he must; yet let him not despair, but comfort himself with this, that as they are contrary, so no man hath ever yet excelled in both, as appears in *Aristotle* and *Theophrastus*; the one (as Sir *John Dodderidge* saith) surmounting in sharpness of understanding, the other that way inferiour, yet every way comparable in sharpness of judgement. And of our own (to omit other) Sir *Anthony Brown* and Sir *James Dyer*, Knights, both having been chief in their place of Justice; the one, saith the same Author, having an incompara-

parable sharpness of wit, the other an irretragable soundness of judgement; to the attaining whereof nothing conduceth more then slowness of belief, and distrust; which are the sinews of wisdom; Nor is any thing more prejudicial to it, then precipitancie, and impatience of delay or attendance on the determination of Right Reason; which makes us commonly run away with half or a broken judgement. In which respect *Aristotle* in his *Ethicks* very elegantly compares it to a hasty servant, that goes away posting without his errand. Without this faculty of judgement, though a man were furnished with every thing else, he hath no more sufficiencie to judge or plead, then the Code or Digest, as one saith, which compassing within them all the Laws and Rules of Reason, for all that, cannot write one letter.

Examen de ingenios. c. 11.

The faculty of Retention or Memory is the receptacle of the Apprehension, and is one of our Students many natural indowments, without which he is a Lawyer to day, and

and none to morrow. For he is not like to grow rich, who layes up his treasures into a bag with holes. And the Muses are therefore said to be the daughters of *Jupiter* and *Mnemosyne*, which signifies Memory: this being indeed the ground of Experience, and Experience the mother of Arts. And as Nature hath given to the bodies of men for the furtherance of corporal strength and nutriment, a retentive power to clasp and hold fast that which preserveth it, until a through Concoction be wrought: so proportionably is the faculty of Memory given to Reason, as a means to consolidate and inrich it. And Fluxes, as in the body, so in the minde, too, are arguments and authors of weakness. What booteth it to *read much*, which is a *weariness to the flesh*? to meditate often, which is a burden to the minde? to learn daily with increase of knowledge, when he is to seek for what he hath learned, and perhaps then especially when he hath most need thereof? Without this, our Studies are but lost labour,

Arist. Metaph. l. 1.

and

and our Student will be but another *Curio* the Orator in *Tully*, who was wont when he had propoled three things in an Oration, to forget some one or other of them, or to add a fourth. Or like *Calvisius Sabinus*, of whom *Seneca* saith, that being at vast charges in matter of learning, he was not yet able to retain fast the names of *Achilles* or *Ulysses*. Yet if our Student be not furnished with this, or hath by any accident impaired it, or that it be otherwise denyed, as the same Philosopher tells us is easily, *Res est ex omnibus partibus animi maxima delicata & fragilis memoria, in quam primum senectus incurrit:* [Memory (saith he) of all the other faculties is the most nice and weak, whereof old age makes his first conquest:] Yet I should not have him practise the Art of memory, which, saith the Lord *Bacon*, though certain it is this art may be raised to points of Ostentation prodigious, yet in Use it is barren and burdensome, and little less then dangerous and destructive to Natural memory

Cicero de Oratore.

Seneca Ep. 27.

Sen. Prolem ad Controversus.

memory. Nor is the repeating of a great many words, Names or Verses, on once hearing, as *Seneca* could do, as he tells us, *Duo millia nomina recitata quo ordine erant dicta reddebam, & ab his qui ad audiendum preceptorem nostrum convenerant, singulos versus à singulis datos cum plures quam ducenti efficerentur, ab ultimo incipiens usque ad primum recitabam:* And *Cyrus* of whom *Xenophon* testifieth that he could salute all the Souldies of his Army by their names, any matter of Estimation, but onely of Strangeness without worth; neither is it dexterous to be applyed to the serious use of business and occasion. This faculty springs out of moisture; for this makes the brain pliable, and the figures are easily imprinted: and this is evident in Children, which in their young years shall better con by heart, then in any other time of their life; for then doth the brain partake of greatest moisture: an instance whereof we have in *Seneca*, who saith, *Quacunque apud illam* (speaking

Plin. l. 7. c. 24.

Sen. proem ad controv.

(Speaking of memory) *Quicquid puer aut juvenis deposuit quasi recentia aut modo audita sine cunctatione profert. At ea quæ illi inter proximos annos commisit, sic perdidit & amisit, ut etiam si sæpius ingeruntur, totiès tanquam nova audiam.* [Whatsoever I have laid up in my memory when I was a childe or a young man, it produceth without delay; as if they were newly or lately heard: But what I have committed thereto within these later years, it hath so lost them, that though I heard them never so often, I still hear them as new matters.] Therefore in choice of persons for this Study, we should do as Architects do in choice of fit Timber for building. They chuse first the straitest, and that which hath fewest knots and flaws in it; which in the minde answereth to clearness and evenness of apprehension: for a clear minde like strait and smooth Timber, will work easiest. Next, they take the heart, and strongest substance (and cut out the sap) because that is strongest, and best able to bear weight,

weight: and this answers to maturity and soundness of judgement. Lastly, they are no Sallow, Willow or Birch, and such as are quickly apt to putrifie and wear away; but such Timber as is lasting, and retentive of his nature, Oak and Elm; and this answereth to the memory.

Elocution, or a prompt and ready delivery of the matter conceived, is another of our Students natural Indowments. And Eloquence, saith *Cicero*, is a judicious fitting of choice words, apt and grave sentences, unto matter well disposed, the same being uttered with Manly moderation of the Voyce, Countenance and Gesture, *&c.* A matter of no small consequence, being that whereby *Cæsar* with few words quieted the Commotion of an Army! And *Pericles* and *Pisistratus*, even when they spake against the peoples Liberty, over-ruled them by their Eloquence to believe and embrace what they spake, and by their Tongue effected that which their Sword could hardly have effected. He must have

Cic. in prol. Rhetor.

Suet. in *Cæsar*, c. 73.

a Delivery full of Dignity, without Affectation, agreeable to the matter in hand, and set forth with Gravity. *Vero circa flosculos captare turpe est*: the matter is to be minded more then the words; yet are not the words to be neglected on the one side, nor affected on the other side: *Sint verba electa, non captata*; for the nicety of words breaks the weight of an Argument; and therefore is he worthily called *Hominem delirum qui verborum minutiis rerum frangit pondera*. Above all, he must have a care that the words be suitable to the matter in hand: *Res non verba componere, & animis dicere non auribus tantum*: if the matter be good and well ordered, he shall not want words; according to that of the Poet,

A. Gellius.

Horat. de art. poet.

Rem bene dispositam vel verba invita sequuntur.

And it will be no small advantage (being indeed good Policy and Discretion) for him to have his Speeches composed and premeditated:

Cujus

Cujus oratio sicut vita debet esse composita. And to trust to Invention and Memory is no part of Prudence; for those that hazard these, are with the least Commotion put to a *Non-plus.* Though it is reported of *Severus Cassius*, that he spake best *ex tempore*, and without meditation; and that he was more beholding to Fortune then Diligence; and to be interrupted in his speech, redounded to his profit; and his Adversaries feared to urge him, lest his sudden Anger redoubled his Eloquence. But he is but one, and *One Swallow* (as we commonly say) *doth not make a Summer.* And our Student is herein to avoid over-much boldness and confidence, nothing adorning it more then an humble submission of matter of doubt, even then when by Argument or Proof it is most fully cleared. The Philosophers Rule is, *Sit oratio pressa, non audax*: if it be weighty, it will pinch of it self, without any confident Application or Assertion.

Seneca.

Val. Max.

Sen.

And herein he must likewise avoid all

all passion, and shew the evil for that puts all into confusion. *Iracundi hominis iracunda est oratio, & commoti nimis incitata.* This passionate kind of speaking hath three bad effects: 1. It discomposeth the Speaker, being often at a loss of the matter he intended to utter. 2. It taketh away much of the force and weight of the same, the speech being as it were put out of joynt; especially if it were by way of Argument and Proof, one part depending upon another. 3. It taketh away the grace of the delivery. Therefore must his speech be mildly and pleasantly delivered, passing by all occasions of anger if any be given; and then shall he have *verba apte contexta, & oratio leniter fluens.* And that our Student may think this worth his while, let him hear *Seneca*, who saith, *Est decor proprius orationi leniter lapsæ*; and saith *Aristotle*, *Magnæ sunt vires nitidæ ornataq; orationis.* His words must not crowd one another in the delivery, but flow smoothly and softly. *Hoc ego in vi-*

Rhet. l. 3. c. 1.

viro sapiente [illegible] exigo, ut oratio ejus sine impedimento exeat, proferatur tamen malo quam profluat. Summa summarum hac erit, tardiloquum te esse jubeo. [This I accept of, but do not require in a wise man, that his speech flow without impediment, but his words should be rather drawn then run from him. In short, I would have thee be slow of speech.] To speak well and much, is not the work of one man; for they that abound in words, are barren in good speech: like Trees that are full of Leaves, but yeild little Fruit. Great Speakers are like Waters and Vessels, which the shallower and emptier they are, do make the louder noise; and the ignorance and confidence of such Speakers is usually discovered in their vain and empty Tautologies; which is the reason, as the Oratour observes, why they are usually more copious then far learneder men, *Quia doctis est electio & modus*, because able Speakers use choice and judgement in what they produce. And fluent utterance can-

Sen.

Quint. Rhet. l. 2. c. 5.

cannot finde place in men of great knowledge; an instance whereof we have in *Socrates*, *Plato*, *Aristotle*, and others, who though of great knowledge, yet had not the gift of Eloquence, their words having but a slender Ornament, and themselves a simple manner of delivery. Whereas on the other side there is nothing solid, their speeches most commonly being like Spiders Webs, curious but thin; and the sudden flashes such use to adorn themselves withal, are like rotten Wood in the dark, of more shine then substance; whose Use and Ornament are like themselves, swift and vanishing, at once both admired and forgotten. His care is likewise that his speech be gentle and pleasing, not crabbed, harsh and envious; and therefore acute and subtil Questions are to be avoided, as likewise constrained Allegories, Allusions and Similitudes; for these resemble Crab-Fishes, where there is more picking work then meat to eat, and their ends are commonly Brawls and Contentions.

In

In a word, *Animi & ingenii celeres esse debent, qui ad excogitandum acuti, ad explicandum ornandumq; sint uberes, & ad memoriam firmi & diuturni.* Yet if herein our Student be defective, let him not despair; for Sir *John Dodderidge* saith, I know no cause why we may not say the same of our Lawyer, which he (meaning *Cicero*) saith of the Philosopher, *Philosophum si afferat eloquentiam, non esse aspernendum; si non habeat, non esse ab eo flagitandum, dum tamen complectatur verbis quod vult, & dicat plane ut intelligatur.* [If a Philosopher be eloquent, we ought not to despise him; if he be not, he must not affect it; so that he can comprehend in words what he conceives, and speak them plainly, that he may be understood.] And some defective herein, have notwithstanding attained to no little Eminence in their Profession: witness Sir *Thomas Hetley*, who in his Reports speaking of Sergeant *Athow*, gives him this *Encomium*, That he was a man somewhat defective in Memory and

Elocution; but of profound Judgement, and great Skill in Pleading.

The next are the Qualifications Intellectual and Acquisite, wherewith our Student ought to be adorned: And of those first, Learning in general is a necessary Ornament (if I may so say) though I confess the Objections, that have been made against it, *Multum habent ponderis.* To instance a few: As, 1. That some men have been eminent herein, yet furnished with no other Learning, then what their Natural Parts afforded: And, 2. That Law is the Science of Sciences. *Lex non est tantum scientia, sed scientificissima*, saith *Plato*, and consequently comprehends all other Sciences, at least as far as they are requisite; and those need not be fetched elsewhere.

——*Non te quæsiveris extra.*

And as Sir *Henry Finch* saith, the Sparks of all Sciences in the World are raked up in Ashes of the Law.

And,

And, 3. That the Law is *Multorum annorum opus* [a Studie that requires no short time for Perfection,] and consequently, there is no spare time for other Sciences. But as on the one side, I grant it no matter of Necessity; yet on the other side, it is a matter of Ornament, and conduces much to the understanding of the Reasons of the Law. For though some have been excellent herein, without the help of other Sciences, in regard of their great natural Gifts; yet it doth not follow that all may arrive that Eminencie, if short of their natural Indowments; knowledge of other Sciences being as a Guide to lead him to Perfection in this. And it is probable those eminent Persons might have been much more Excellent, if they had been assisted with the helps of other Learning; the want whereof gave occasion to some, as Sir *John Dodderidge* saith, to call them *Doctum quoddam genus indoctorum hominum.* And although the Law doth comprehend other Sciences, yet are they

borrowed, not Inherent or inbred in the Laws; and therefore moſt fit to be ſought, and better underſtood in their proper choice: *Dulcius ex ipſo fonte bibuntur aquæ.* And although the Journey be long, and the Time ſhort, (*Ars longa, vita brevis*) as *Seneca* ſaith; yet the Maximes that the Law hath borrowed from other Learning, when they are viewed in their proper Sphear, are beſt underſtood, both for Nature and Extenſion, and eaſieſt apprehended; and ſo make ſome amends for the time that is beſtowed in inquiring into them. And this Science being written in three Languages, to wit, Latine, French and Engliſh, as Sir *John Forteſcue* tells us, *Leges terræ illius* (ſpeaking of England) *Triplici lingua addiſcuntur, videlicet, Anglicana, Gallica, & Latina.* The knowledge of the Latine tongue is very requiſite in our Student, without which he cannot underſtannd many Old Statutes and Ancient poſitive Laws, which were written in that Tongue; as the Statutes of

Fort de Com. leg. Ang. p. 110.a.

Magna

Magna Charta, [illegible] the second, and many other [illegible] likewise the ancient Writers, *viz. Glanvil, Bracton, Fleta, Hengham, Forteſcue*, and others, and likewiſe all Writs and Pleadings. The like may be ſaid of the French Tongue, wherein all the Annals and year-Books, and indeed the moſt part of the Law is written; a Language obtruded on us by the Conqueſt; wherein the Lawyers were wont to Plead, till by the force of the Statute of 36 *E.* 3. *c.* 15. that Cuſtome was reſtrained: and the Exerciſes of our Students at the Inns of Court are performed in this Tongue, and moſt of the Terms of this Science taken out of this Tongue; and indeed, cannot be ſo properly expreſſed in any other Language whatever.

The next that our Student ought to be furniſhed withal, is the Art of Grammar, whereof the Lord *Bacon* ſaith, that as man hath ſtriven againſt the firſt general Curſe, by the invention of all other Arts: ſo hath he ſought to come forth of the ſecond

general Course, which was the confusion of Tongues, by the Art of Grammar. Hereby is our Student taught Orthographie and Etymologie. The first is a matter of great consequence; witness the mischief the want thereof produceth. A *Scire facias* abated, for that the Writ was *ex insinatione*, being no Latine word; whereas it should have been *ex insinuatione*. So a *Precipe quod reddat* abated, because *Hæri* for *Hæredi*. The like in a Writ of Waste, because *ad destrictionem* for *ad destructionem*: and an Indictment quashed, for having *Burgaliter* for *Burglariter*, being though no Latine, yet a word of Art. The second is very necessary, not onely to the affording of Arguments of great Weight, but also gives much Light and Delight in the Apprehension of the terms and words of Art: *Dicebatur Finis* (saith *Littleton*) *quia finem litibus imponit*: and the Lord *Cook* upon him, adds, After the Example of *Littleton*, it is good to search out the Etymologie and true Derivation of Words: for

24 E. 3. 7.

Coke Rep. 13 H. 4. 10. T. N. B. 46. 6.

Igno-

Ignoratis terminis, ignoratur [illegible]
and this in his Commentary on *Littleton* hath he put in practise, as appears in his Etymologie of *Vicecomes, quia vicem Comitis supplet*; Sheriff, of Shire-Reeve, *prefectus Comitatus*; *Bastardus, à Graco verbo* Βασκειν, *meretrix*, *fol.* 16. *a. Admiral*, from the *Saxon Aen mereal*, over all the Sea, 260. *b. Pyrate*, from the word πειρατης, Rover at Sea. 391. as likewise *Alien Leigeance*, 129. *a. Burgage*, 108. *b. conformation*, 295. *b. Count*, 17. *a. Deane*, 95. *a. Disparagement*, 80. *a. Homage*, 64. *Heir*, 7. *b. Marshal* 74. *Escheat*, 13. *a. Prerogative*, 90. *b. vid* 61. *a.* 18. *b.* 1. *a.* 322. *b.* 226. *a.* 116. *a.* 168. *b.* 205. *a.* And many more, which for brevity sake I omit.

The next in order is Rhetorick, which is without doubt a great Ornament; and as Master *Fulbeck* saith, a pleasant Thing, and full of Delight. But to dwell too much upon it, in Professors of Gravity is neither comely not commendable, being indeed below their Profession; their

Study being for the general good, and melodious Government of the Commonweal. And if any man reprove these Professors, for want of sharpness of Invention, and fineſs of Wit; let him be well advised, and consider the substance of their Works; and he shall finde that they carried *Mercury* in their Brain, and not on their Tongue; and that they wanted not Wisdom, though they were defective in Rhetorick. But this bordering upon the next, as *Aristotle* saith, *Ars quam Rhetoriam vocamus ad dialecticam refertur, seu ſobolem ejus, & tanquam membrum quoddam adnaſcens*, we proceed thereto, and that is

Rher. l. 1. c. 3.

The Art of Logick, which is a necessary Qualification in our Student, notwithstanding the cavils of some, that we are Logicians by Nature, and that there is no use of Syllogistical Arguments in Law. In respect whereof, well hath one said, *Quod nulla ſcientia abſque dialectica ratione comparari poteſt.* For it is an Art that defineth and openeth the Nature of Things, divideth the Whole

Cicer Tuſcul. Queſt.

Whole into Parts, sheweth the coherence and despendence of things, judgeth of Truth and Falshood. *Ex qua*, saith *Cicero*, *cum summa utilitate existit ad responderandas, tum maxime ingenua delectatio & digna sapientia.* Nor do we want testimonies of our own herein. For the Lord *Bacon* tells us, that it is a Science excellent, the end whereof is to teach a form of Argument, and to secure Reason: and the Lord *Cook* speaking of that famous Lawyer *Littleton*, amongst other things saith, that he was learned also in that Art which is necessary to a compleat Lawyer, I mean Logick. And likewise Justice *Dodderidge*, who hath discoursed at large hereof, saith, This Art teacheth our Student to collect the Axiomes, Grounds and Rules observed in that Art which he Studieth; and being so collected, fitly to dispose thereof, which yeeldeth diversity of Matter, and ready Furniture for dispute. And likewise it teacheth him in his Arguments to demonstrate and strengthen his Opi-

Cabeins case. Coke l.7.24.6. l.10.31. Shelleys case.

mion, in defining the Thing disputed of, to divide the same into parts, and distinguish the divers significations of the Words; as also, to search the difference of Matters and Cases proposed. *Littleton* maketh use of this about the Word *Assize*, affirming it to be *verbum æquivocum æquivocans*: and thus *Assize jurata* is *æquivocum æquivocatum*, &c. So doth he likewise through his whole Book of Terms, as appears by his many Syllogisms, Inductions and other Arguments, and his Definitions, Descriptions, Divisions, Etymologies, Derivatives, Significations, and the like. Hereby likewise is our Student inabled to resolve his Arguments into better Form, and to make them thereby the more convincing; and how to apply those Authorities that are not directly in the Point, but by Inference. But our Student must not dwell too much upon Logick, nor tamper therewith, striving to bring the Law into a true Logical Method, which is impossible, or at least not without great Difficulty;

and

and when done, hardly worth the Time loſt thereby; witneſs *Seneca*, who told his *Lucilius*, *Non vaco ad iſtas ineptias.* [I have no time to ſpare for ſuch Niceties.] Whereof ſaith Maſter *Fulbeck*, ſome do ſpend a whole decade of Hours in doing nothing elſe, then ſeeking out the proper Genus and difference of one onely thing; and when they have done, they are ſcarce ſo wiſe as they were before, but may ſay of themſelves as *Gentilis* ſpeaketh of them very fitly, *Confidentia aſtra petimus, ruimus in precipitia.* Logick is therefore requiſite to the Studie of the Law, yet not ſo as to tie every thing thereto; Logick being ever more given to Form & Words, then Matter & Subſtance; which ſome good Scholars infected withal, make none of the beſt Lawyers; *Circa Floſculos occupati* [dwelling upon Flouriſhes.] Our Student ſhall do well to follow the Authors advice (I mean *Seneca*) herein, *Proſpicienda iſta, ſed proſpicienda tantum, & à limine ſalutanda; Hactenus utilia, animum ſi preparant, non detinent;*

Abberit. Gentil. l. 4. de Jur. Interpretat.

tamdiu

tamdiu enim istis immorandum est, quam diu nihil animus agere majus potest, rudimenta sunt nostra non opera. [These Things are to be looked into, and no more, and saluted at the Entry; They are thus far Profitable, if they prepare, not detain the Minde; for we ought not to make our abode with them any longer, then we are fit for greater Things: they are our Rudiments, not our Works.] And though our Student be not skilled herein, yet if he be seen in Rhetorick, that will supply this defect; for Logick differeth from Rhetorick onely, as the Fist from the Palm; the one close, the other at large. And the difference is good which is made between Orators and Sophisters, that the one is as the Greyhound, which hath his advantage in the Race; the other as the Hare, which hath her advantage in the Turn. So as it is the advantage of the weaker Creature. And if our Student want both, yet let him not despair, but *Studere toto animo*, as *Seneca* calls it, for the Law is no other then Reason; and

and if our Student have but a good ſtock of this, let him improve it to the utmoſt; and he will in a ſhort time prove a true Logician; for Logick is but Reaſon in an Artificial Dreſs. Therefore ſaid *Ariſtotle*, *Homines à natura Dialecticos & Rhetoricos eſſe.* [That men are Logicians and Rhetoricians by Nature.] And Maſter *Fulbeck* after a diligent inquirie tells us, that this Artificial (or if you pleaſe,) Art of Logick is not neceſſary to a Lawyer; Nature it ſelf informing him ſufficiently therein: eſpecially the Arguments of this Profeſſion being not tied to Artificial Concluſions, but is to be left to them, *Qui nodum in ſcirpo quærunt*, [Seek a Knot in a Bulruſh] fight with their Shadows. Neither is an exact knowledge of the Art requiſite in a Lawyer; it is ſufficient if he have ſo much as will ſerve his own Profeſſion; for ſaith one, *Neq; tamen exactam adeo omnium diſciplinarum notitiam à perfecto juris profeſſore petimus, ſatis eſt eum eſſe ejus de qua ſermo fuerit non inſcium.* C. Cantiuncula *de ſtudio juris.*

Of

Of the Moral Qualifications requisite in our Student, the first is Gravity; this of all other best becoming him, to whose Profession Gravity it self laies claim: And hereby ought he to order both his Gesture and Habit. Of the first, there ariseth no small advantage: This orders the Wisdom of Conversation, which as it ought not to be over-much affected, so much less ought it to be despised; for it hath not onely an honour and respect in it self, but an Influence also into business, therefore said the Poet,

Ovid. ——*Nec vultu destrue verbatua.*

And as many hereby destroy the force of their words, so likewise may it be done of their deeds, saith *Cicero*, recommending to his Brother affability and easie access. *Nil interest habere ostium apertum & vultum clausum.* So *Atticus* before the first interview between *Cæsar* and *Cicero* the War depending, did seriously advise *Cicero* touching the composing

ſing and ordering of his Countenance and Geſture. For as the Tongue ſpeaketh to the Ear, ſo the Geſture ſpeaketh to the Eye; and therefore many ſubtil perſons, whoſe Eyes do dwell upon the Faces and Faſhions of Men, do well know the advantage of this Obſervation, being indeed the moſt part of their Abilities: neither can it be denyed, but that it is a great diſcoverer of the Affections, and a great direction of Buſineſs: for as the humours and effects of the Body, do alter or work upon the Minde; ſo the paſſions of the Minde do alter and work upon the Body. The outward behaviour, and the private and ſubtil motions and labour of the Countenance, ſaith *Cicero*, is *Animi janua* [the Gate of the Minde.] None more cloſe then *Tiberius*, and yet *Tacitus* ſaith of *Gallus*, *Etenim vultu offenſionem conjectaverat*; that anger that he miſſed in his Speech, he found in his looks.

The ſum of Behaviour is to retain a mans own Dignity, without intruding

ging upon the Liberty of others. But if Behaviour and outward Carriage be intended too much, it passeth into Affectation; and then, *Quid deformius quam scenam, in vitam transferre!* [To act a mans life;] and although perhaps it proceedeth not into that extream, yet it consumeth time, and takes up more room in the minde then conveniently it might. And certainly the intending of the discretion of Behaviour, is a great Thief of Meditation; neither is there a greater impediment of Action then an over-curious observance of Decency, and the Guide of Decency, which is Time and Season; and such as are accomplished in that humour of Urbanity, please themselves in the name, & seldom aspire to higher vertue; whereas those that are defective herein, do seek comelines by reputation. His Habit likewise ought to be decent and neat, not gay and apish: nor may he spend any part of that time allotted for study, in a curious and antick Dress, which after all the pains bestowed, doth not be-

become a man. *Non est ornamentum virile*, saith *Seneca*: but this ought to be left as peculiar to those weaker Vessels, Women, to dwell and be wholly intent upon the out-side, in which respect I believe *Plato* thanked God that he was not made a Woman. *Moribundus* Plato *naturæ gratias egit quod mas fuit non fœmina.* Neither is it onely an effeminate part, but is likewise a sure signe that they are frothy and empty, and accordingly resolved to put a good face upon the matter, and Peacock-like to place their worth and excellency in their out-side, of whom the same *Seneca* saith, *Nosti complures juvenes, vesti & coma nitidos, de capsula totas, nihil ab illis speraveris forte, nihil solidum.* And as on the one side this is to be avoided, for we have a Philosophers warrant, *Licet sapere sint pompa*; so on the other side, Decency and Neatness is not to be neglected, being that pre-eminence which Nature hath bestowed on us: *Mundæ vestis electio appetenda est homini, Natura enim homo nitidum & ele-*

gans

gans animal est. To conclude: Behaviour is as it were the Garment of the Minde, and it ought to have the Conditions of a Garment: for it ought to be made in fashion, it ought not to be too curious, it ought to be shaped so as to set forth any good making of the minde, and hide any deformity; and above all, it ought not to be too strait or restrained for exercise or motion. In a word, *Sit modestus incessus & compositus, ac probus vultus, & conveniens prudenti viro gestus:* [Let the Gate be modest and composed, (for sai h the Poet, *Est & in incessu pars non temnenda decoris*) the Countenance honest and chearful, and the Carriage that which becomes a discreet and prudent man.]

The next is Temperance, as it is generally taken for a moderate and sweet temper in all things. It is not onely a Vertue, but a seasoning Sauce of all the rest. This curbs the insatiable desires of worldly things, and keeps him from the unquiet and careful pleasure of Covetousness

tousnes and Ambition: it will free him from the tormenting Condition of those, *Quos divitiæ per summum acquisitæ sudorem male habent, quos honores nulla non arte atq; opere petiti discruciant:* [Whom Wealth gotten by the sweat of their brows will not suffer to rest, and whom honour attained unto by right and wrong do disquiet.] And herewith, as an inseparable Companion, is always joyned that necessary Ornament of a Lawyer, to wit, Patience: *Virtus contumeliarum & omnis adversitatis impetus æquanimiter portans*; passing by all Affronts and Offences whatsoever: the want whereof is no small disadvantage. For Impatience is as a Rack that urgeth men to confess their secrets, carrying them indeed beyond themselves, *Vino tortus & ira.* ——*Tiberius* himself, who though a close man, and of reserved passions, yet being stinged and incensed by *Agrippina*, he came a step forth of his Dissimulation, and this passion quite altered his nature, *Et veram occulti pectoris vocem elicuit.* Tacitus Annal. l. 1.

Nam

Num ideo cadat quia non regnaret? He brake forth into words ſtrange and unuſual from ſo cloſe a Diſpoſition, to wit, VVhether ſhe were wronged becauſe ſhe did not reign, as *Tacitus* obſerves. There is not any paſſion that ſtandeth more in need of moderation then this doth, both becauſe it is one of the frequenteſt that we are troubled with, and the moſt unruly, as that which doth bear a ſway over the reſt, and of all other hath the leaſt recourſe to Reaſon: and hence is it that the moſt ignorant are moſt affected with this paſſion, *Oi λογισμῷ ὀλίγιστα χρώμενοι θυμῷ πλεῖστα εἰς ὀργὴν καθίστανται.* Thoſe that make the leaſt uſe of Reaſon, are moſt carried away with this paſſion. And it doth not onely prejudice buſineſs, as to carry men inconſiderate to every thing, and put them wholly out of frame, ſo as not to be able to do any as they could, as *Cicero* ſaith, *Semper ira procul abſit, cum qua nihil recte, nihil conſiderate fieri poteſt, nec ab eis qui adſunt probari:* [Let Impatience be always far from you, by reaſon

Thucyd.

reason whereof nothing can be done either rightly as it should, or considerately;] for those things that are done in heat, cannot be so resolutely performed, nor approved by them that are present: But it is likewise prejudicial and hurtful to the body: for saith *Seneca*, *Ira exitus furor est, & ideo ira vitanda est, non immoderationis causa, sed & sanitatis:* [The end of Choler is Madness, therefore ought to be avoided, not only for Moderation, but also for Healths sake.] This one defect, where it gains footing, shall mar all other Vertues and Parts, be they never so excellent and adorning.

The next is Modesty, that he be not over-confident and peremptory in his VVords or Assertions, nor given to much Boldness and Obstinacy in his Determinations. Yet on the other side, too much Bashfulness is not commendable in any, unless a Young Man, as *Seneca* saith, for then it is *Signum virtutis*. Yet are many of such a soft and facile Constitution, that the least Contradiction of their Discourse, though in a known Truth,

pre-

presently fleeth their blood in their face. *Durat adhuc perversa recti verecundia*, as the same *Seneca* saith; and he, maugre his Stoick Apathie, was forced to say, *Invitus erubesco.*

Hereunto we may add Humility, whereby our Student may avoid preposterous Reading; not to be puffed up with Knowledge, which Conceit once admitted, makes him neglect all Industry, because in his own Opinion he hath arrived already at the height of Learning and Knowledge. *Multi ad sapientiam pervenissent nisi se jam pervenisse putassent:* [Many had arrived at VVisdom and Knowledge, had they not thought themselves there too betimes.] And if that Knowledge which they falsly fancie in themselves were true as they would have it, yet *Maxima pars eorum quæ scimus, est pars minima eorum quæ ignoramus:* [The greatest part of what we know, is the least part of what we know not.] Such a man is yet to seek, nay he is hardly yet in the way to Knowledge. And this Study being *multorum annorum opus,*

opus, our Student muſt be willing to learn from every body, and think none ſo mean but that they have ſomething worthy the learning. And though our Student fancie that he knows more then others, yet he muſt needs think that others know ſome things that he doth not. *Prudens* (ſaith one) *omnes libenter audit, omnia legit, non Scripturam, non perſonam ſpernit, ab omnibus indifferenter, quod ſibi deeſſe videt quærit, non quantum ſciat, ſed quantum ignoret conſiderat:* [A wiſe man hears every man willingly, and reads all, and doth neither deſpiſe the perſon, nor the writing, but ſeeks indifferently from all what he ſees wanting in himſelf; neither doth he ſo much conſider what he knows, as how much he knows not.] And ſome there are that flee ſo high of a ſuddain, that they count it a diſgrace to learn from others, but would be content to begin and end their Study at once: wherefore ſaith one, *Scio quoſdam eſſe qui ſtatim Philoſophari volunt:* [Some (ſaith he) would be Philoſophers in an inſtant.] Hal. 3. Didaſc.

He

He must not therefore nourish any high Opinion of his own Abilities; much less so to be in love with his own, as to set light by all other mens Parts, how excellent soever, with a *Quanto melius tu hæc fecisses?* And lastly, let him know this to be an infallible Rule, That to boast or talk much of ones Knowledge, is a signe of Ignorance; and that invincible too.

And lastly, that which gives a grace to all the rest, is Courtesie and Affability, which is a necessary Qualification in our Student. This is that which illustrates and adorns all other Gifts. This begets Love and Friendship, whence comes Conference, the Life of Study. Therefore *Aristotle* gives it no other name then φιλία, [Friendship.] And saith *Cicero*, *Difficile enim dictu est, quantopere conciliet homines comitas, affabilitasq; sermonis.* And well doth it deserve the name of Friendship, in as much as it doth excel it; for Friendship is by reason of the Love that is joyned with it, but this is ἄνευ πάθους, *sine amoris*

Lib. 2. Eth. c. 7.

Lib. 1. Off.

tis effectu, and Friendship is onely towards our Acquaintance; but Affability and Courtesie is *æque erga notos & ignotos, æque etiam erga eos quorum familiaritate utimur, atq; erga eos quorum familiaritate non utimur.* Hereby is he preserved from Sullenness, Morosity and Peevishness, that he offend no man hereby. *Hunc habere sibi propositum, ne quem offendat, aut potius ut delectet.* And herein there is a mean to be observed, that on the one side our Student do not fall into an ἀρεσκείαν, too great a desire of Compliance, who laying aside all Gravity, Decency and Honesty, approve of all the Deeds of others, or at least feign themselves so to do, be they never so foul or unbecoming, deserving no other name then κόλακες, of Flattering Parasites. Nor on the other side into a δυσκολίαν, a vein neither of pleasing nor approving of any Person nor Actions; who either hate Society, or given to Company at any time, they are sullen, and will neither in good and civil Discourse, or so much as a cheerful Look, comply

Eth. l. 4. c. 6.

with others, but rather disapprove or reprove every thing, and that with a peevish and biting kinde of Speech, rendring themselves no less odious then troublesome to their Companions. *Inter utrumq; tene,* Discretion must guide him therein, to whose Direction we leave him. And having done with his Qualifications Intellectual and Moral, there are some Conditions (as we may call them) not falling under either of those Heads, very requisite in our Student, for his well being, whereof briefly.

Seneca. The first is an Inclination to this Studie. *Eo inclinandum quo te vis ingenii defert.* Without this whosoever attempts this or any other Study or Profession whatsoever, doth but labour in Vain: and if the Reason hereof be but considered, here is no cause of wonder; for the same Philosopher tells us, that *Coacta ingenia male respondent, & reluctante natura irritus labor est.* This was the Reason that *Isocrates* laying hands on *Ephorus*, drew him from the Court of Judicature, knowing him

to

to be inclined to, and fitter for another imployment: *Isocrates Ephorum [illegible] injecta manu à foro subduxit ut illorum componendis monumentis historiarum ratus.* And for any to attempt this Studie *invita Minerva*, as they say, is plain folly; nor can it be imagined that any man with a loathing Minde and forced Industry, can compass such a laborious Studie, not being able to take any Delight therein. Whatsoever such a man doth, is but to plunge himself the deeper in Difficulties: Whereas on the other side, a propensity to the Studie renders the Work less tedious, the pleasure that the Student findes therein far exceeding any trouble or vexation whatsoever. And this delight in the Studie, makes the Student throughly to understand and apprehend the same; and it doth not onely dilate the Spirits, but doth also quicken the Memorie, according to the saying, *Quæ magna æstimamus, memoriæ infigimus.* [What we have a high esteem of, we fasten in our Memorie.] In a Word, without inclination to a Stu-

ly, there can be neither Pleasure nor Proficiencie therein.

The next Condition requisite in our Student, is a solid, settled and constant Minde, without which it is impossible for him to make any profitable Progress in this Studie. For the Cases being so Intricate, and the Reasons hereof so deep and weighty, a wavering and unsetled Minde cannot attain to the Apprehension thereof; being herein like the Mathematicks, wherein if the Minde be caught away but for a moment, he is to begin anew. One of such an unsettled Minde, is not capable of Meditating and Ruminating upon those things, that it hath with difficulty apprehended, so as to fix it, and make them its own. *Qui ex aliis in alia transiliunt, aut ne transiliunt quidem, sed casu quodam transmittuntur, quomodo habere quicquam certum mansurumve possunt, suspensi & vagi?* And this unsetledness and inconstancie is *signum vacillantis animi, & nondum tenentis tenorem suum*; in *Seneca*'s Stile; it produceth diverse and

Seneca.

contrary

contrary thoughts, *aliis alio [illegible]tibus*, which, like diverse and contrary Diet, hinders Digestion, one thought smothering the other, not suffering him to have the least Benefit of any. His Body is among his Books, but not his Mind; or if reading, doth not shew himself attentive and diligent, but doth either number the Tiles of the House, or build Castles in the Air, or doth nothing less then what he should do; his thoughts being much like good Womens talk at a Gossiping, whereof *Seneca* tells us, *Varius nobis fuit sermo ut in convivio, nullam rem usq; ad exitum adducens, sed aliunde transiliens.* And hence ariseth rash and hasty Judgement, and slight censures of weighty Matters; which is the fault of too many, not considering that which *Fabius* saith in *Livie*; *Omnia non properanti clara certaque fiunt, festinatio improvida ac cæca est*, and therefore is rightly termed *noverca scientiæ* [The Step-dame of knowledge] *Cum seriis serio agendum*: this Studie being built upon the perfection of Reason, requires

Fulbeck.

[illegible] Meditation; [illegible] what we apprehend *altius quotidiana meditatione figendum est*; That being fastened in our Mindes, and the Reason thereof fully considered, *Habitus fiat quod est impetus.* That bringing it within the Verge of his own Reason, he may upon the least summous finde the result thereof. In Order hereunto, our Student is to have a great care, that his intent Studie do not put him into a loathing, and infect him with those melancholy Humours, that some are troubled withal; liking and nourishing most those thoughts, that are furthest from their intended Professions, building Chimera'es of their own imagination, and yeilding themselves to their obvious fancies, and imaginary wishes, and pine away their thoughts in empty Velleities, which are but *motus in vacuo*, like *Noahs* Dove, finding no Place for her Feet to rest on; empty indeed, being such as are so far from enjoyment, that they address no endeavours towards the same. *Concupiscunt*

scunt etiam, [illegible] Senec. ra-
will in a short time [illegible] Appetite, and bring a lo[illegible] upon this and all other Studies, an[illegible]ot onely so, but it blasteth that pretious Flower of our Students Garden, I mean Memorie; for it impresseth so many Figures upon the Brain, that the *actus reminiscendi* is hereby confounded, and makes him an Old Man before his Time: for Old Mens Memories are full of so many Figures of things, which they have seen and heard, in the long course of their Life, that when they would bestow more therein, it is not capable thereof, for it hath no void Place where to receive it. And the many projects that such Humourists heads are troubled withal, makes them so look forwards, that all that passed is forgotten; which made the same Philosopher say *Futuro imminentium caduca memoria est.* Our Student therefore is to use his utmost endeavours to compose and settle his Minde. *Et primum compositæ mentis argumentum est, posse consistere, & secum morari.* Seneca de benef. l. 3.

The ... Diligence in pursuing of his Se... for *Studium est assidua & ... tractio cogitationis.* And the Books and Cases are so many, long and intricate, which must be read and disposed for our Students future Practise, that it cannot be compassed without unwearied Diligence. Nor can the vast Body of the Law be reduced into a narrower Compass; which if it were possible, yet would it be no great advantage: for my Lord *Cooke* saith, *Compendia sunt dispendia.* But indeed it is impossible, unless he can likewise take away the infinite and innumerable Affairs and Actions of men, which daily cause diversity of Cases. Therefore must our Student take a resolution not to sink under his Burden, but with all convenient Industry to proceed in his Studie; not to be wearie, but to take up *Seneca*'s Resolution, *Nullus mihi per otium dies exit, partem noctium studiis vindico, non vaco somno, sed succumbo, & oculos vigilia fatigatos cadenteq; in opere detineo.* Nor is it sufficient for him not to forgo

Ep. 8.

his

his Station, but [illegible] Courage and Alacritie go [illegible] his Studie, taking this for a [illegible] *Non progredi est regredi*: [If he will not go forwards, he must go backwards.] And let him not think that if he gives any cessation to Studie, that he shall finde it where he left it: for so will he unlearn more more in a Week then he can learn in a Month. Neither is that all, but the tediousnes he takes in going over that again, which by his neglect he forgot, is more irksome then the first onset. And our Student without a great hinderance of Proficience cannot abridge any of his set Time of studie; nor is he to make a Recreation onely thereof, but to make it his whole businesse; and so much the rather, because it is true that the Philosopher saith, *Ars longa, vita brevis*, [The Studie is long, and the Time but short.] *Non cum vacaveris studendum est; omnia alia negligenda, ut huic assideas, cui nullum tempus magnum satis est, etiam si à pueritia usq; ad longissimos humani ævi terminos vita protendatur.* Seneca.

[illegible] any colour to pretend [illegible]ss of Body and tenderness [illegible]mplexion, saith Master *Fulbeck*, these are but pretences indeed, which such fond pretenders by their conceit and custom at last bring themselves to. Nor is diversity of Business any allowable excuse, though I grant this may be some hindrance: for *Obstat ad studia liberalia turba negotiorũ*. Yet must our Student wave every thing that may interrupt his Studies, if it can be done with convenience; *Vitare turbam* (with *Seneca*) *& secedere, non tantum ab hominibus, sed etiam à rebus, & primum à suis.* And having once freed himself from Business, let him not involve himself therein, like those of the same Author, *Qui simulant occupationes & augent*: And in such matters as are not to be neglected, but either for conveniencie or necessity to be performed, let him observe the same Authors Rule, *Rebus non me trado sed commodo, nec confector perdendi temporis causas.* Our Student therefore is to be diligent in his Study

dy: for saith [illegible] *Quin[illegible]tiam, labor scientiam [illegible]at.*

And now having done with his Qualification, and armed him *Cap-a-pe* against this Encounter, if our Student be defective in any of these, then he must make use of the Lord *Bacons* advice, who saith, That the covering of Defects is of no less importance then the valuing of good Parts, which may be done three ways; by Caution, by Colour, and by Confidence. 1. By Caution, when men doing Ingeniously and Discreetly, avoid to be put unto those things, for which they are not proper: whereas on the contrary, bold and unquiet spirits will thrust themselves into matters without difference, and so Publish and Proclaim all their wants. 2. By Colour, when men make Way for themselves, to have a construction made of their faults, or wants, as proceeding from a better cause, or intended for some other purpose; and therefore whatsoever want a man hath, he must see that he pretend the vertue that shadoweth it,

as

[illegible] he [illegible] he must affect Gravity [illegible] so [illegible] rest. For the second, a man must frame some probable cause why he should not do his best, and why he should dissemble his Abilities; and for that purpose must use to dissemble those Abilities that are most notorious in him, to give colour that his true wants are but Industries, and Dissimulations. 3. By Confidence, which is the last, but surest Remedy, (being that which beggers all other Parts) to depress, and seem to despise whatever a man cannot attain. This Confidence doth fascinate and bind Hand and Foot, those that are either shallow or weak in judgement, which are the greatest Part; yea, and prevaileth with the wisest at some times. These men when they have promised great matters, and failed most shamefully, yet if they have the perfection of Boldness, they will but slight it over, and make a turn, and no more ado. *Mahomet* made the People believe that he would call a Hill to him, and from the Top of it offer up his Prayers

for

for the observers of his Laws the People assemble; *Mahomet* called the Hill to come to him, again and again; and when the Hill stood still, he was never a whit abashed, but said, *If the Hill will not come to* Mahomet, Mahomet *will go to the Hill.* To slight defects is no little Policy; observing the principle of the Merchants, who endeavour to raise the price of their own Commodities, and beat down the price of others. But there is confidence that passeth this other, which is to face out a mans own defect, in seeming to conceive that he is best in those things wherein he is failing; and to help that again, to seem on the other side that he hath least opinion of himself, in those things wherein he is best. And to our Student thus qualified for this Study, I must say with *Seneca, Legi te totum dedica, nam dignus es illâ, & illa te digna,* as will appear in the following Chapter.

CHAP. II.

Of the Nature of the Study.

THe next thing to be conſidered by our Student is, The Nature of the Study, and that is Law, which the Greeks call Νόμος, ἀπὸ τῦ νέμειν, *à diſtribuendo*, anſwerable to that of *Juſtinian*, that it is *Jus ſuum cuiq; tribuendi.* The Latines call it *Lex*, *à ligando*, as St. *Germin* in his *Doctor* and *Student* ſaith; for, ſaith he, the Law is derived from *Ligare* to binde. But *Bracton*, and before him *Cicero*, derive it *à Legendo*, from chuſing, becauſe of the choice of Knowledge that is in it: wherefore ſaith he, *Eamq; rem tibi Graco nomine, à ſuum cuiq; tribuendo appellatam, ego noſtro à legendo, nam ut illi aquitatis, ſic nos delectus vim, in lege ponimus, & proprium tamen utrumq; legis eſt.* And this Law is twofold, Native and Poſitive. The

Cicero de legibus.

Law

Law Native, is either the Law of Nature, or Reason: thus divided because the Law of Nature generally considered, is referred to all Creatures, as well reasonable as unreasonable; for all unreasonable Creatures live under a certain Rule or Law given to them by Nature, necessary for them to the Conservation of their being; but as it is referred to the reasonable Creatures, it doth not differ from the Law of Reason, as St. *Germin* in his Dialogue observeth; for, saith he, the Law of Nature specially considered, is called also the Law of Reason: and the same Author tells us, that when the Law eternal is known to his Creature reasonable, by the Light of Natural Understanding, or by the Light of Natural Reason, that is called the Law of Reason. And herewith agreeth *Cicero's* Definitions hereof; *Lex est ratio summa insita in homines natura, quæ jubet ea quæ facienda sunt, prohibetq; contraria.* Concerning this Law, the same *Cicero* saith, *Constituendi vero juris ab illa summa*

Doctor and Student, c. 2.

Cic. de legibus.

lege

lege capiamus exordium, quæ seculis omnibus ante nata est quam scripta lex ulla. Et non tum deniq; incipit lex esse, cum scripta est, sed tum cum orta est, est orta autem simul cum mente divina. And therefore this Law is always good and just, and ought to be kept amongst all men at all times; and therefore cannot be abolished or changed; according to the Maxime,
Ib. *Jura naturalia sunt immutabilia:* and against this Law, Prescription, Statute or Custome cannot prevail. And all positive Laws must be consistent with the Law of Reason, according
Ib. to that of *Cicero, Omnium legum est inanis censura, nisi legis divinæ imaginem gerat.* And if at any time any positive Laws be made that are contrary to the Law of Reason, they have not the force of a Law, but are void, and against Justice; for this is the Rule or Mold for all other Laws whatever. VVherefore, saith the same *Cicero, Si populorum jussis, si Principum decretis, si sententiis judicum, jura constituerentur, jus esset latrocinari, jus adulterare, jus testamenta*

menta falsa supponere, & hæc suffragiis aut scitis multitudinis probarentur. And, *Stultissimum est illud existimare omnia justa esse, quæ scita sunt in populorum institutis aut legibus.* [If the Peoples Ordinances, the Princes Decrees, Sentences of Judges, could be made Laws, it would be lawful to steal, to commit Adultery, and to forge the Wills of the Dead, if it should be allowed by the suffrage or Voices of the People. And it is a most foolish thing to imagine all things to be just which are commanded in the Ordinances or Laws of the People.] Nor is it the Conceipts or Mandates of Men that can make Laws. *Non enim opinione sed natura constitutum est jus.* Yet the Law of Nature not being discerned by all, it is necessary for the good order of the people to have many things added by Magistrates to the Law of Nature, or rather in Affirmance of it, as some Statutes are of the Common Law. So that the positive Law is but the Law of Nature or Reason written in Capital Letters, discernable by the

Eyes

of all, and as a Comment thereupon. Therefore from the Precepts of the Law of Reason, (as, that every man devest himself of the right he hath to all things by Nature: that every man is obliged to stand to, and perform those Covenants he maketh: that every one do help and accommodate each other as far as may be without danger of his Person, or loss of his Means, to maintain and defend himself; that such things as cannot be divided, be used in common, proportionable to the number of them that are to use the same, or without limitation when the quantity thereof sufficeth; to love good, and flee evil: to live peaceably: in a word, the old Precept, *Quod tibi fieri non vis, alteri ne feceris*, and many such like) are derived the Laws Positive, as likewise from other secondary Precepts, which follow by consequence or inference, and are necessary Conclusions drawn from the first; as in this last we ought to do as we would be done by: hence follows, that wrong is not to be done to any man, be-

because he would not be wronged by any man. That Good is to be loved, here is included that a man shall love his Benefactor, in that he is a Benefactor, and includeth in him a Reason of Goodness. And from this Law of Reason are framed the Laws positive, and therefore must concur with the Law of Reason. By these Laws positive, it appeareth who hath right to things, and who not; for whatsoever a man hath by such positive Laws, he hath justly; and whatsoever he hath against such Laws, he hath unjustly.

Positive Laws are sundry and divers, according to the Constitutions of the several places and Countries that they are in force in. And there are in Nature certain Principles and Fountains of Justice, whence all positive Laws are derived: but as Streams: and like as Waters do take Tinctures and Tastes from the Soiles thorow which they run, so do positive Laws vary according to the Regions and Government where they are planted, though they proceed from the same Fountains; and such are the Laws 9 b. Polyd. Comment.

Laws of *England*, which consist of three parts; the Common Law, Statute-Law, and Particular Customes. As Sir *John Fortescue* saith, —— *In legibus sunt elementa quædam unde ipsa profluunt, ut ex materia & forma, quæ sunt consuetudines, Statuta, & jus naturale, ex quibus sunt omnia jura regni, ut ex materia & forma sunt quæq; naturalia:* [In the Laws (saith he) there are certain Elements whence they flow, as of matter and form, which are Customes, Statutes, and the Law of Nature, [or the *Common Law*,] of which consisteth the Law of this Realm, as all other natural things proceed out of matter and form.]

1. The Common Law of *England* consists, 1. Of common Customes of the Realm time out of mind used, being neither against the Law of God, nor Reason, but found to be convenient and necessary for the Commonwealth; as, That the eldest Son is onely Heir to his Ancestour; and if no Son but Daughters, then all to be Heirs.

That

That Inheritances shall never ascend from the Son to the Father, or any other Ancestour in the right Line. That if a man purchase Lands in Fee, and die without Heirs, the Land shall go to the Lords by escheate. If an Alien have a Son that is an Alien, and after is made Denizen, and hath another Son, and purchaseth Lands; the younger shall inherit. Bastards shall not inherit. All Goods and Chattels of the Testators shall go to the Executors. All the Interest of the Wife in her Goods is determined by her Marriage, and invested in the Husband. If the Wife be an Inheritrix, and have Issue, and dies, and the Issue dies, the Husband shall be Tenant by the Courtesie. If the Wife be of the age of nine years, and the Husband is seised of an Inheritance during the Coverture, & dies, the Wife shall have the third part during life for her Dower. And such like.

II. The Common Law consists of Principles

Principles or Maximes, which have been always taken for Law in this Realm. *Sunt quædam universalia in legibus* Angliæ, *quæ in iisdem docti similiter & Mathematici Maximas vocant, Rhetoriti Paradoxas, & Civilistæ Regulas juris denominant*, saith *Fortescue*:) [There are certain Universals in the Laws of *England*, which the Learned therein, as likewise the Mathematicians, call Maximes; the Rhetoricians Paradoxes, and the Civilians Rules of Law.] And these Maximes it is not lawful for any one to deny, being indeed Conclusions of Reason; and therefore every one of them is sufficient Authority to it self, agreeing with that of *Seneca*, *Juris consultorum valent responsa, etiam si ratio non reddatur, nam per se multum habent pondepris.* And saith another, *Omnis disciplinæ progressus à generalibus præcetis recte deducitur, quæ veluti cujusq; artis fundamenta ad omnium specierum, atq; individuorum cognitionem ita necessaria sunt, ut neq; ignorari, neq; in dubium revocari debeant. Plane*

Fortescue de Laud. leg. Ang. p. 21.

Ployd. Com. 27 a.

ne ignorari Universalia non possunt, sine quibus ad particularium notitiam minime pervenitur. Revocari in dubium non debent, cum ut ipsa luce clariora, vel notius supra se habeant nihil. Sect. his igitur. Just. de just. & jur. And *Fitz.* in his Preface to his *Nat. Brev.* to the same purpose saith, *En chescun art & Science il y ad certain Rules & tiel manner sont divers Rules & Fundaments en la Science del common Ley des terre as ceux que voilont apprender la dit Ley, especialment al commencement; car desuis ceux Fundaments as queux doit home done foy & credence, & les quels il ne poit denier. Et en queux home doit doner foy & credence, & non pas eux denier queux sont fort necessaries à tout la ley depend.* They are of the same effect and force as the Statutes are, and are always determined by the Judges, and not by a Jury. And whereas the general Customes be known to all throughout the Realm, as well to the Unlearned as the Learned, and may easily be known, and by little study, these Maximes are onely known in the

the Kings Court, or among them that take great study in the Laws of the Realm, and among but few other persons: for instance: That defeent taketh away Entry. A Writ of Action cannot be granted ober. The Defendant in an Action of Debt upon a single Contract, may wage his Law. If a Villain purchase Lands, and the Lord enter, he shall enjoy them as his own. Things that lie not in a manual Occupation, cannot be granted without Deed. The King can disseise no man. No Freehold may be either given to, or derived from the King, but by matter of Record. A Lease and a Release amount to a Feoffment. None shall take benefit of his own wrong. No man can do an Act to himself. The Law respecteth the order of Nature. When the cause ceaseth, the effect ceaseth. Things be dissolved as they be contracted. Things grounded upon an ill or void beginning, cannot have a good perfection. He that claimeth paramount a thing, shall neither

neither take benefit nor hurt [illegible] by. Where the Foundation fail-eth, all goeth to the ground. A perſonal Action dies with the perſon. A perſonal Action once ſuſpended, is gone for ever. The more worthy thing draws to it the leſs worthy. Things acceſſary are of the nature of the Principal. Poſſeſſion is favoured where there is equality of Right. Nothing to be void which by poſſibility may be good; and the like. And it would be worth the while if our Student in his Reading ſhould tranſmit all the Maximes he meets with in an orderly way, Alphabetically or otherwiſe, with the Book and Page to a ſmall Manual, which he may always carry about him, ready to take up thoſe *tempora ſubſiciva*, which fall from the hotteſt buſineſs, (for buſineſs ebbs and flows) when perhaps the diſtance of that, from his own place, can afford him no better conveniency.

And this Common Law is the moſt excellent and moſt perfect, and

without comparison the best to make and preserve a Commonwealth: for other Laws are imposed upon the subjects before any probation or tryal made, whether they are fit and agreeable to the Nature and Disposition of the people, or whether they will breed any inconvenience or no; but Custome never becomes a Law to bind the people, until it hath been tryed and approved time out of minde, during all which time, there did thereby arise no inconvenience; for if it had been at any time found so, it had been used no longer, but had been interrupted, and consequently had lost the force of a Law.

II. The second part of the Laws of *England* are Statutes, made by the King, Lords Spiritual and Temporal, and the Commons assembled in Parliament, in such cases where these Customes and Maximes were defective, or in affirmance of these Customes and Maximes, if remisly observed. And this Statute-Law cannot chuse but be excellent, being several times debated in several places,

and

and by persons of several Conditions and the Royal Consent likewise even before it hath the force of a Law; which if it were not every way convenient, and fit for the intended purposes, some of so great a number must needs spie the inconvenience and danger.

The third and last are the particular Customes, used in several Counties, Cities, Boroughs and Seigniories in this Realm; which not being disagreeable to the Law of Reason, though against the said general Customes, (for *consuetudo tollit communem legem*) yet stand in force, and are taken for Law: and these Customes if denied, are tryed by a Jury of twelve men, unless such a Custome be of Record in the same Court: As the Custome of Gavel-kinde, in *Kent*, **That all the Brethren shall inherit; and if the Father be attainted of Felony, and executed, yet shall the Children inherit:** according to the saying,

The Father to the Bough,
And the Son to the Plough.

[illegible] the Custome of *Burrough* [illegible] in several Seigniories, where [illegible] youngest onely inherits. In London, That the Inhabitants (before the Statute of 32 H. 8. of Wills) might by their Testament inrolled bequeath their Lands to whom they would, save in Mortmains; and if Frémen, in Mortmaine. That in an Action of Debt without specialty, if the Plaintiff produce a Bill under the Defendants hand acknowledging the Debt, he shall not wage his Law. Also in some Mannors the eldest Daughter by the Custome shall only inherit. Also in some places the Wife shall have all the Tenements of her Husband for her Dower: in some places the Moyety, & several others.

Doct. & Stud.

Liber albus.

Litt. 140. b. 110. b.

This of Law, above all other Professions, is most honourable, in as much as it is both profitable, and pleasant: that it is most profitable, one experienced herein affirms, to wit, *Fortescue*, who saith, *Non est advocatus in universo mundo, qui ratione officii sui tantum lucratur*: and pleasant

pleasant it must needs be, [illegible]
both in Action and Contemplation;
for the same Author tells us, *Horum plus contemplativa videtur quam activa, sicq; quietam illi vitam agunt, ab omni sollicitudine & mundi turbinibus semotam.* And it is not onely so, but it is the principal means of attaining Felicity as far as may be in this life: for without Skill and Knowledge in this Profession, Justice cannot be administred; and Justice is perfect Vertue, to wit, Legal Justice, not that which is called Commutative or Distributive. And the ancient Philosophers contending so much about their *Summum bonum*, have agreed in this one. For the *Peripateticks* placing it in Vertue, the *Stoicks* in Honesty, and the *Epicures* in Pleasure; yet the *Stoicks* defining Honesty to be that which is well done, and praise-worthy through Vertue, & the *Epicures* affirming nothing to be pleasant without Vertue, agreed with the *Peripateticks* herein, that it is Vertue alone which obtains Felicity. So that Justice being *Vir-*

and this not attainable th[illegible]w, it neceſſarily follows [illegible] true, if not the onely means of attaining Felicity: as Sir *John Forteſcue* ſaith, *Leges humanæ non aliud ſunt quam regulæ quibus perfecta juſtitia docetur; Juſtitia vero quam leges revelant, non eſt illa quæ commutativa vel diſtributiva vocatur, ſeu alia quævis particularis virtus, ſed eſt virtus perfecta, quæ juſtitia legalis nomine deſignatur. Unde cum perfectus uſus virtutum ſit felicitas, & juſtitia humana non niſi per legem perfectè nanciſcitur, nedum ſit virtutum effectus, ſed & omnis virtus, ſequitur quod juſtitia fruens fœlix per legem eſt, & per eam ipſe ſit beatus.* Law is the Life of Peace, and conſequently of a flouriſhing Commonwealth; it is the Rule and Leſſon of Juſtice, ſo neceſſary for all Perſons, Times and Places, as no Family, no City, no Commonwealth, no Kingdom can ſtand without the ſupport thereof. *Civitas ſubſiſtere nequit quæ legibus & conſuetudinibus non eſt firmata.* Without this the Prince doth not

Ariſt. l. 6. Pol.
Britton. fol. 1.
Fleta. l. 1. c 29.

nor know how to Rule, [illegible] the Peo-
ple to Obey. Without this [illegible]
Prince looseth his Prerogative, [illegible]
the Subject his Liberty; The [illegible]
Man is spoiled, and the Poor Man
oppressed. *Lex* (saith *Cicero*) *est
fundamentum libertatis.* VVithout
this we cannot travel safely by Day,
nor sleep securely by Night. With-
out Law we should be oppressed by
force in the Country, if she did not
defend us; and undone by fraud in
the City, if she did not relieve us.
Law incloseth every Mans Garden
and Field, and makes it his, and makes
every Mans Cottage his Castle of
Defence. So as there is not such an
universal and continual Use, neither
of the Light of the Sun, nor of Fire
and Water, as there is of the Light,
Heat and Comfort of Justice: for a
Man may remain alive some Hours
without the Use of these common Be-
nefits; but a Commonwealth, where-
in each private Mans Weal consist-
eth, cannot stand or continue one
Minute of an Hour, if Justice, which
is her Soul, be departed from her;

[illegible] would happen, she would [illegible] dismal shreik behinde her, [illegible] *Vox magna & detestabilis*, as *Se-* [illegible] calls it, ἐμοῦ θανόντος γαῖα μίχθητο πύρι.

Lib de Clem.

[When Justice dies, let the World be made a Bone-fire.] For this secures Us and Ours against all violent Attempts whatsoever. And if we do but consider men in the state of Nature, we may easily discover the great Benefits that flow from the Law. For men being in an equal state and condition, and of equal power, which was not difficult for them to compass, for it is an easie matter for the weakest to kill the strongest; and they are equals who can do equal things one against another: from this equality must arise mutual fear, and therefore could neither expect from others, nor promise to themselves, the least security. And from this Equality was liberty given to every man to make use of the utmost of his Natural Faculties to his greatest Advantage; no other being Judge of this Advantage but himself. And men in this state striving

to

to continue that Right [illegible]
present necessity Nature had g[illegible]
or rather they had taken of a[illegible]
to do what he would, a[illegible]
whom he thought fit; and to possess,
use and enjoy all that he could obtain: according to the Poet, *Vivitur ex rapto*: and whatsoever he would, that being good, because he wills it, and onely he judge of its goodness, and it being in his power to use all means for the obtaining of his ends: Hence must needs arise Jealousies and Suspitions on all hands, which at the last can do no less then break forth into a civil War. The Law provides against all these inconveniences, by subjecting them to her Precepts, from whence ariseth inequality and property, *meum & tuum*: although as Mr. *Fulbeck* saith, these things were not by the Law of Nature, but by the necessity of the time, for which cause afterwards men by the Precepts of that Law were civilized, and brought to a sociable Communion. And therefore not without reason hath this Profession gain-

both of God and men. And it is observed as a spiritual blessing of Almighty God, that none of this profession die, *Intestatus & improles*, [without will, and without child] as *Forteſcue* hath it. *Unde & hoc genus gratiæ vidimus ſubſecutum, quod vix eorum aliquis ſine teſtamento & exitu decedat, quod juſtis magna & quaſi appropriata benedictionis Dei eſt.* Another thing no leſſe obſervable is, that more noble Families of this Nation have had their riſe from this Profeſſion then any other whatſoever, as the ſame Author obſerves. *Ex Judicum ſobole plures de Proceribus & Magnatibus Regni huc uſq; prodierunt, quam de aliquo ſtatu hominum Regni, qui ſe prudentia & induſtria opulentos auliceos nobileſque fecerunt.* [There are more Peers and great men of this Kingdom, ſprung out of the Judges off-ſprings, then any other condition of men that have by their wiſdome and induſtry made themſelves wealthy, famous, and rich.] And this will eaſily appear to any that ſhall compare

De laud. leg. Aug. 124. b.

compare the names of [illegible] with the Profeſſors of [illegible] Termes and year-books. And ſaith another, *It is an infallible argument that the eſtates of ſuch as riſe by the Law, are builded upon the foundation of Vertue, in that Gods bleſſing is ſo manifeſtly upon them, not only in raiſing, but in preſerving their houſes and poſterity; whereof there are examples not a few, and thoſe not obſcure, in every Shire in* England.

With man it hath deſerved (as it hath found) favour and reverence; for if the Law be ſo neceſſary, certainly the ſervice of men learned in the Law is very needful, without which Juſtice it ſelf cannot poſſibly ſtand: for, *Periret juſtitia, ſi deeſſet qui juſtitiam allegaret.* If no man ſtudied the Reaſons of the Law, if no man kept in memory the Rules of the Law, or courſe of proceedings therein, what would become of publick juſtice in a ſhort time? or how ſhould the benefit of the Law be derived or communicated unto the people? For as in the Body natural,

the

[illegible] Soul cannot use her [illegible] by special Organs of the [illegible] disposed and fitted by [illegible] every Function: So in the Body Politick of a Commonwealth, the Law, which is the Soul thereof, produceth no effect or operation at all, but by such of her Ministers as by Art and Experience are inabled and qualified for her service; for, *Lex est justitia inanimata*, saith one: *Et Lex est mutus Magistratus*, saith *Cicero*: The Law of it self is dumb, and speaks nothing, but by the tongue of a learned and eloquent Lawyer; she is deaf, and heareth no complaint, but by the ear of a grave and patient Judge; she is blind, and seeth nothing, no enormities, but by the eye of a watchful and diligent Officer. And although the Philosopher tells us, that *Jupiter* did first invent and give the Law, yet was *Mercury* sent with that heavenly gift to deliver it over unto mankind. So that without the assistance of these *Mercuries*, the learned Professors hereof, there can be little or

Protagor. in Plato.

no

no use of the Law. In ... dead, *Et non* (*nisi actu*) ... fore have the Professors ... ranked with the ennobled. ... saith the Civil Law, the Professors hereof, being the Interpreters of the Law, they are the most necessary Instruments in a Common-wealth, and their Place and Calling is honourable: they ought to be freed of Mulcts, Publick Charges, Impositions, and all other Burdens of the Common-wealth, and to be written or sent unto as unto persons of special worth and dignity. And *Constantine* the Emperour likewise decreed, that yearly pensions should be paid unto them out of his treasure. And *Valentinian* the Emperour would have them that were by the space of twenty years Professors of the Law, to be called by the name of *Comites*. Neither hath this Nation been wanting herein. The Law is the life of the Commonwealth; for all its peace, plenty, civility, and moral honesty depend thereupon. That men enjoy their wives, lives, children,

Vid. Fulb. fol. 3. Extat. lex Constant. lib. 10. Cod.

dren, their goods, good names, and all things else, they are beholding to the Law for it. *Quid sunt Regna nisi latrocinia, sine lege?* Without Law, the Land would be full of Thieves, the Sea full of Pirates, every place full of danger; we should not know what were our own, nor what were another mans; what we should have from our Ancestors, nor what we should leave to our Children. *Omnia incerta sunt cum à jure discessum est*; lay aside the Law, and run into unavoidable confusion; there would be nothing certain, nothing sure, no Contracts, no Commerce, no Conversation among men; but also all Kingdomes and States would be brought to confusion, and all humane Society would be dissolved. Therefore well might *Cicero* say, *Major hereditas venit unicuique nostrum à jure & legibus, quam à parentibus.* For the gifts of our Ancestors without Law to settle them in us, and keep the possession of them inviolate to us, were to no purpose. Doth not this profession

comfort

comfort every day such ... ved, counsel such as ... relieve such as are circumvented, prevent the ruine of the improvident, save the innocent, support the impotent, take the prey out of the mouth of the oppressor? Is she not *Oculus cæco, & Pes claudo*, as *Job* saith? Doth she not stretch forth *brachium seculare*, in defence of the Church and true Religion? So that I easily believe that of the Orator, *Constat profecto ad salutem Civium,* Cicero. *civitatumque incolumitatem, vitamque hominum & quietam & beatam inventas esse leges.* A worthy Professor of the Law (as Sir *John Davies* In præfat. ad relat. saith) is a Starre in the Firmament of the Commonwealth; He is *lux in tenebris*, wheresoever he dwelleth: His house is an Oracle, not only to a Town, or City, but to a whole Country round about him: so as he may truly say of the people that seek his Counsel, as *Apollo Pythius* spoke in *Ennius* of such as resorted to his Temple:

Suar um

...rum incerti, quos ego ope

Ex incertis certos, compotesque consilii
Demitto, ne res temere tractent turbidas.

Of positive Laws, it is very evident to any that shall consider, and weigh them in the balance, that the Laws of *England* outvie and excel all others, as much as a Star doth a Gloworm. For if they had not been of the best stamp and frame, some of the Conquerors of this Land, namely, the Romans, Saxons, Danes, or Normans, either moved thereto by Justice, Reason, or Affection, would either have changed or abrogated the same. Whereof *Fortescue*, *Et in omnibus harum Regum eorum temporibus, Regnum illud eisdem quibus jam regitur consuetudinibus continuo regulatum est. Quæ si optimis non extitissent, aliqui Regum eorum, justitia, ratione, vel affectione concitati, eas mutassent aut omnino*

nino deleviſſent. [I
time of the reign of
of this Nation, this Ki
governed by the ſame Cu
now it is: Which if they had not been the beſt, ſome of thoſe Kings, for ſome ends or reaſons, would have either changed or abrogated them.] Excellent they are if only in this, That they do not only ſecure us againſt our equals, but all other whatſoever, yea even our Soveraigns: So that the King cannot in the leaſt wrong his Subjects, nay cannot do as much as another Subject may. For the King cannot command one in his preſence to be arreſted, which his chief Juſtice and divers others may: For if that were legal, and the Subject wronged, he ſhould be put to ſeek for remedy where none could be had. Nor do the Laws of *England* admit of an abſolute and ſole Regal power and dominion, ſuch as moſt Nations groan under, according to the Civilians Rule, *Quod Principi placuit, legis habet vigorem*; but it is otherwiſe with our Laws, which

binde

[illegible] Political as well as a Regal [illegible]mment; and not without [illegible] for, *Rex datur propter Regnum, & non Regnum propter Regem; quo omni potestas Regni referri debet ad bonum Regni.* Whence it follows, that the King of *England* cannot in the least change the Laws without the consent of the whole Kingdome by their Representatives in Parliament. *Non potest Rex Angliæ ad libitum suum* (saith *Fortescue*) *leges mutare Regni sui; Principatu namque nedum regali, sed & politico, ipse suo populo dominatur.* [The King of *England* cannot at his list change the Laws of his Kingdome; for he rules not only by a Kingly, but also a Political Government.] And as he cannot change or alter Laws without such consent, so neither can he make any, so as to bind the worst of his Subjects, to any matter of charge or damage; wherefore saith the same Author, *Rex Angliæ per se aut ministros suos, neque Tallagia, Subsidia, aut quavis alia Onera imponit subditis suis, aut*

Leges

Leges eorum mutat, au
sine consensu & assensu
suis in Parliamento expres
potest Rex Anglie remittere
lium onerare Impositionibus peregrinis.
And again, *Anglie Statuta non Principis voluntate, (ut in Regnis quæ tantum Regaliter gubernantur) sed totius Regni assensa ipsa conduntur.* And the effect of this Political Government is very commodious for a Commonwealth; for the meaneſt of his Subjects cannot be diſſeized of his Freehold, or queſtioned concerning the ſame, or any other real or perſonal Chattels, but by the Law of the Land; nor any man impriſoned, or tried for his life, or otherwiſe, but by the ſame Law. *Angli non implacitati ſunt de mobilibus aut poſſeſſionibus ſuis, vel arrestati de crimine aliquo qualitercunque magno, niſi ſecundum leges terræ illius, & hi ſunt fructus quos parit Regimen politicum & regale.* Which is contrarily practiſed in *France*, and other places and Nations, where they are condemned in private, never ſeeing the face of

their

[illegible] and as privately hurried out of this life, without the least [illegible] of Law.

Not are the Laws of *England* only the best, but also the ancientest of humane Laws. *Nec illorum mundi regnorum deicolarum leges, tanto ævo notæ sunt.* Wherefore *Fortescue* might very well conclude, *Quare non bonas, imò non optimas, esse Anglorum Leges & Consuetudines, sicut non dicere, ita nec suspicare fas est.* And those Cavils of Difficulty, Tediousness, and Uncertainty, which are imputed to the Law, are of so little moment, that they scarce deserve an answer; *Subtilius est contempsisse quam solvere.* For the first, I may well say with *Seneca*, It is difficult, because we dare not, nay will not tie our selves to a little industry to search into it. *Non quia difficilis est non audemus, sed quia non audemus difficilis.* Nor ought it to trouble us, that the Law-books are so many and large, that there is such an Ocean of Reports, and such a perplexed Confusion (as they say) of Opinions,

Opinions, inasmuch as the Science is short and easie enough to the industrious; and if our books [illegible] compared to the books of the Civil Law, and other Sciences, they are but as mole-hils to mountains. And if it were guilty of Tediousnes, yet is not this any cause of desisting; for I would fain know what things of worth are composed without pains and travel; yet if the pains be compared and balanced with the pleasure and profit, it is (as Mr. *Fulbeck* saith) but as a few drops of hail to a whole showre of Manna: but we are assured to the contrary, that there is no Tediousnes in it, and that by one that had experienced it, to wit, *Fortescue*, who saith, *Quanto plus legis mente pertractaveris delectabilius tu frueris.* [The more we see into them, the more delight we have in them.] And as to the Uncertainty of the Law, that is easily answered, for as the Lord *Cook* saith, The Law is not uncertain *in abstracto*, but *in concreto*; and the incertainty thereof is, *Hominis vitium, non*

Ep. ad lib. 9. relat.

Professions; and ignorance is the cause of this contentious incertainty, according to *Cicero*, *Ignoratio juris litigiosa*. Neither is there any Art or Science that standeth upon discourse of Reason, that hath her Rules and Maximes so certain, and infallible, and so little subject to divers interpretations, as the Common Law of *England*; as the Lord *Cook* observes, That in all his time there was not moved in any Courts of Justice in *England*, two Questions touching the right of Descents or Escheats, or any other fundamental Points of the Common Law: so certain, sure, and without Questions are the Principles and Grounds thereof. Our Student must shake off these cavils; for they are the Objections of sloth and laziness, and are in us, and not in the Law. *Non enim in Rebus vitium* (saith the Philosopher) *sed in ipso Animo*. And if our Student expects that wisdome to preserve *se & sua*, to keep his memory from Silence, and Oblivion, to be of great account with the greatest,

De leg. L.

Ep. ad lib. 2. relat.

greatest, to attain to [illegible] ledge which is the highest of all humane Sciences, (for from this as the Moon from the Sun, [illegible] other Sciences their splendor) he must, as the same Mr. *Fulbeck* saith, take *Phaëtons* resolution, to ascend to the Chariot of the Sun, who ere he could accomplish that, was to pass by uncouth wayes, and by the ghastly shapes of deformed Creatures. So must our Student pass by a little world of Cases, Judgements, Statutes, Arguments, Treatises, Comments, Expositions, Customes of Courts, Pleadings, Moots, Readings, and such like: *Et per ejusmodi offensas ementiendum est confragio sum hoc iter.* This he must do, that expects any great measure of knowledge in this Science, (being, as *Plato* calls it, *Regia disciplina.*) And all the pains and industry bestowed hereupon, and all the difficulties of this Study, are sufficiently rewarded by the Dignity, Credit, and ample Fortune which belongs unto it. There is no Science by which Seneca.

the

[illegible] Commonwealth receives more benefit; for there is no course of [illegible] age, nor state of men, which can either flourish or be without the safeguard of the Laws. In a word, *Leges proficiunt ad bonos mores, atque non tantum imperant, sed docent; Animum formant & fabricant, vitam disponunt, actiones regunt, agenda & omittenda demonstrant, sedent ad gubernaculum, & per ancipitia fluctuantium dirigunt cursum; sine his nemo securus est.* Therefore I may safely conclude, that the profession of Law is to be preferred before all other humane Professions and Sciences, as being most noble for the matter or subject thereof, most necessary for the common & continual use thereof, and most meritorious for the good effects it doth produce in the Commonwealth.

Seneca.

CHAP.

CHAP. III.

Of the Meanes of this Study.

THe Meanes of this Study are Books, the choice whereof is a matter of no ſmall advantage. Theſe are the *Viatica neceſſaria*, that make the journey both pleaſant and ſhort. And certainly this choice is no matter of indifferency; Therefore ſaith the Wiſeman, *If the iron be not ſharp it requireth more ſtrength*; intimating that the election of the Meanes is more effectual then any inforcement or accumulation of indeavours whatſoever. In this Journey therefore, or Study of the Law, our Student, touching Books, is to obſerve two things, *viz.* Their number and nature. For the firſt, he is to ſhun an immoderate deſire of crowding his Study with Books, a practice ſomewhat ancient; for ſaith *Seneca*,

Quemadmodum omnium rerum, sic librorum quoque intemperantia laboramus. For superfluity of Books doth not only distract the thoughts, but doth likewise burden and weary the Spirit: *Distrahit animum librorum multitudo, & onerat discentem turba, non instruit, multoq; satius est paucis te tradere auctoribus, quam per multas errare.* Nor in my opinion is that very commendable which *Bole* saith of St. *Germine*, *Tota ejus substantia cum moreretur in libris fuit*, [That all his wealth consisted in Books.] And certainly this is a great inducement of unsettledness and fickleness in the course of study: This is a sign of an idle and lazie Spirit; and certainly such are perswaded, that it is the number of Books that makes a learned man, for with them most commonly are none found wanting. *Apud desidiosissimos ergo videbis* (saith *Seneca*) *quicquid orationum historiarumque est, & tecto tenus extracta loculamenta.* Some spend more time in gathering of Books, then in perusing them; yea till they have

Bolei Scriptorum illustrium Britt. pag. 600.

have so many, that they have scarce time to read over their Title-pages. *Innumerabiles libri!* (saith the same Author) *quorum dominus vix tota vita sua indices perlegit.* Therefore doth he worthily finde fault with *Livie*, who said, That the forty thousand books burnt at *Alexandria*, was the fairest Monument of Princely wealth: *Elegantiæ regum curæque egregium id opus ait fuisse*; which was indeed a studious Luxury, as our Author affirms; *Non fuit elegantia istud, aut cura, sed studiosa luxuria, imò ne studiosa quidem, quoniam non in studium sed in spectaculum comparaverant.* Yet are they the rather to be excused, which do this out of an immoderate desire of study; *Ignoscerem plane* (saith *Seneca*) *si è studiorum nimia cupidine oriretur*, then such who keep them to no other end then sight and ornament; such as he complains of, who pestered their very Banqueting-houses and Dining-rooms therewith. *Libri, non studiorum instrumenta, sed cænationum ornamenta. Jam inter balnearia &*

[illegible] *[illegible]theca quoque ut neces-*
[illegible] ornamentum expolitur.
Though I confess there is no better ornament for a Studie then Books, yet are they not to be sought after only for ornament; whereof the Philosopher complains, *Nunc exquisita & cum imaginibus suis descripta sacrorum opera ingeniorum, in speciem & cultum parietum comparantur.* But this is in some measure avoided by the observation of the second, which is their matter: That he be furnished with good and approved Authors, following *Seneca*'s rule, *Probatos utique semper lege.* [To read alwayes those that are approved.] And such as make no choice in their reading, but fall on the first that comes to hand, disorder their Studies, and corrupt their Memories, and above all, loose time that gives perfection to study; therefore saith he, *Quid habes cur minus ignoscas nomen marmore atque ebore captanti, quam opera conquirenti aut ignotorum aut improbatorum Authorum, & inter tot millia librorum oscitanti, cui volu-*

minum

minum suorum fronte[illegible] pla-cent, titulique. Our [illegible] therefore must be moderat[illegible] be cumbred with no more then [illegible] must. *Paretur itaque quantum satis sit, nihil in apparatum.* Books ought to be only for use, none for ornament. Neither ought he to content himself with their number, but matter. *Non refert quam multas, sed quam bonas habeat,* was *Senaca*'s rule. And in his choice let no specious Title delude him, but rather make him more careful, to see that the matter of the Book be answerable to the Title; for, *Quorundam scripta clarum habent tantum nomen, cætera exanguia sunt,* their Title-pages too often containing more then the rest of the whole Book. Seneca.

Books written of the Law, may be reduced to these four heads. Historical, as the Years and Termes of the Common Law. Or Explanatory, as the Lord *Cookes* Commentary upon *Littleton*. Miscellaneal, as the Abridgements. Or Monological, being of one certain subject, as

Pleas of the Crown,
Justice of the Peace.
books are written in
three Languages, *viz.* English,
French, Latine, as Sir *John Forteſcue*
ſaith, *Leges Angliæ triplici lingua addiſcuntur, videlicet, Anglicana, Gallica, & Latina.* And although the pleadings in the French tongue was taken away by the Statute of 36. *E.* 3. *c.* 15. as the ſame Author hath it, *Olim placitare in lingua Gallica ſoliti fuerunt, quouſque nos ille vigore cujuſdam ſtatuti reſtrictus eſt*; Yet the Language is ſo appropriated to the Law, that it cannot be aboliſhed, becauſe moſt of the terms, or words of this Art of Law, are in the French tongue, which without great prejudice cannot be altered. *Gallica hucuſque aboleri non potuit propter terminos quoſdam quos plus proprie placitantes in Gallica lingua quam in Anglica exprimunt.* But waving our former diviſion, you ſhall have an account of them as they offer themſelves unto us.

D. laud. leg. Ang. p. 100. a.

Ib.

The

The first whereof is [illegible] which containeth the [illegible] Common Law, and is the ancientest Book of the Law, being written long before the Conquest, as appears by the Book-case of 2 *E.* 3. *pl.* 24. It is called *Registrum Cancellariæ*, in the Statute of *Westminst.* 2. *c.* 24. and this Book (as the Lord *Cook* saith) is the ancientest, and of greatest authority. *Vid. Bracton. l.* 5. *tract. de excep. c.* 7. *fol.* 413.

[illegible] Ep. ad [illegible] lib. re- [illegible] la.

The Mirror of Justices, *Speculum Justiciariorum*, most of it was written long before the Conquest, as by the same appeareth; and many things added thereunto by *Andrew Horne* a learned and discreet Man (as it is supposed) in the Reign of *E.* 1. or *E.* 2. (as Mr. *Selden* saith) who wrote these ensuing Verses before the same, transcribed by Mr. *Selden* but of a Copy of this Book extant in *Bennet*-Colledge-Library in *Cambridge*.

Notes on Forteſcue fol. 3.

[illegible] summam, siquis vult mira tueri,
Perlegat, & sapiens si vult Orator haberi;
Hoc apprenticiis ad barros ebore munus,
Gratum Juridicis utile mittit opus.

Glanvil de Legibus & Consuetudinibus Regni Angliæ, written in the Reign of *H.* 2. as appears by his Book. A History, saith the Lord *Cook*, worth the reading, especially for prosecution of real Actions. About this time was the Treatise called, *The Old Tenures*, composed; a Piece of good use.

Bracton, written by *Henry de Bracton*, a Reverend Judge in the time of *H.* 3. is a Book that contains the whole Body of the Law, artificially and methodically written, and of great use for the information of the Reasons of the Common Law.

Britton, composed (as some say) by *John Britton* Bishop of *Hereford*, by

by the Command of E.
nour whereof runne
Name, answerable to Justi
stitutes. But this *Britton*, that compo-
posed this Treatise, Mr. *Selden* in his Pag. 130.
Notes upon *Forteſcue*, denies to be the Biſhop of *Hereford*, but a Judge of that name about that time; which is more probable. Whoever it was, 'tis certain he was of a great and profound Judgement in the Common Laws, and his Book is accordingly learnedly and methodically written. Though ſome Points of his Law are now obſolete and out of date; which made *Montague*, chief Juſtice, ſay, That his Book contains many errors. Ployd. Com. 58. a.

Fleta is likewiſe a work well written by ſome learned Lawyer, (ſaith the Lord *Cook*) who being committed to the *Fleet*, had leiſure to compile it there; and therefore is called *Fleta*, by the name of the *Fleet*, concealing his own name. The Author thereof is unknown, but it appears by his Book, that he lived in the Reign of *E.* 2. and *E.* 3. *Vid. l.* 1.

Qui ceperunt. l. 2. c. 66.
[illegible] *nullus.*

[illegible] these Books (saith Mr. *Ful-* [illegible] it is not unprofitable to read, so to rely upon them is dangerous. For most of that which they give forth for Law, is now antiquated, and abolished; their Books are *Monumenta adorandæ rubiginis*, of more Reverence then Authority. Their Works are rather matter of Curiosity, then of Progression and Proficience, and tend rather to augment the masse of Learning in learned Men, then to rectifie and raise it: which made Justice *Periam* in *Zouch* and *Bamfeilds* Case, *Leonards* Reports, call them, *Actores non Authores legis.*

Fortescue de laudibus legum Angliæ, written in the Reign of *H.* 6, in commendation of the Laws of *England*, containing withall much excellent matter worthy the reading. He sheweth herein a sharp Judgement; and herein he is exquisite and artificial, that where he endeavoureth to be plain, he spareth not

to

to be profound. To th
on of this Book is
den's Notes upon hi
both ancient and curious
ing.

Statham's Abridgement, publish-
ed in the Reign of *H. 6.* by *Sta-
tham* a learned Lawyer of that time.
A Book (saith the Lord *Cook*,) well
contrived, and of great use.

Littleton's Tenures is a Book of
sound and exquisite Learning, com-
prehending much of the Marrow of
the Common Law. Of this Book
saith the Lord *Cook*, *Hottoman* a
Civilian and Canonist, in his Com-
mentary *De verbis feudalibus, verbo
feudum*, giveth his censure, with
what charity or discretion judge
learned Reader. *Stephanus Pasſa-
verinus* (saith he) *excellenti vir in-
genio, &c. libellum mihi Anglicanum
Littletonum dedit, quo feudorum An-
glicanorum jura exponuntur; ita
incondite, absurde, & inconcinne
scriptum, ut facile apparet verum
esse, quod Polydorus Virgilius in An-
glicana historia scribit, Stultitiam in*

eo-

leans.

malitia & calumniandi

Of *Hottoman* and

thor, I may justly say, and will

more, *Volemus esse legis doctores, non intelligentes, neque quæ loquuntur, neque de quibus affirmant.* And therefore let us leave them amongst the number of those, *Qui vituperant quæ ignorant.* For the Civilians, Their pages are so full of palpable errors, and grosse mistakings, as these new Authors are out of our charity pitied, and their Books out of our Judgement cast away unanswered. Alas, our Books of Law seem to them to be dark and obscure, but no wise man will impute it to the Laws, but to their Ignorance, who by their sole and superficial reading, cannot understand the depth of them. And for *Littleton*'s Tenures, I affirm it against all Opposites whatsoever, that it is a Work of as absolute perfection in his kind, and as free from errors, as any Book that I have known to be written of any humane Learning. Of him, a man of great Excellency in his Profession,

Brit. fol. 374.

Mr. *Cam-*

Mr. *Camden*, hath [illegible] was a famous L[illegible] *Treatise of Tenures* [illegible] Students of the Common [illegible] no lesse beholding, then the Civilians to *Justinians Institutes*. Therefore is it deservedly said, that *Littleton* is not only the name of a Lawyer, but of the Law it self. I have cited him thus largely, that the worth of this Book may the better appear. *Montague*, chief Justice, saith of this Book, *Quæ est le verey & pluis sure Register del fundaments & principles de nostre ley*. *Vide* the Epistle to the Lord *Cookes* Commentary upon him. Ployd. Comment. 58. b.

Fitz-Herberts Abridgement is a Book painfully and elaborately collected; and he hath well contrived that which was confusedly mingled together in so many Year-books. His *Natura Brevium* is likewise an exact Book, exquisitely penned, very useful and profitable for direction and knowledge of our Student in the nature and gift of Writs, which is a matter of great importance, for it

[illegible] of all the Pro[illegible] and *Debile Faur* [illegible] *fabit opus.* He hath like[illegible] a Treatise of Justices of the Peace, but found fault withal by the Judges when published, saith the Lord *Cook*, for that he therein affirmed, That Justices of the Peace having by their Commission Authority to hear and determine Felonies, *&c.* could not hear and determine Murder; which amongst others they clearly over-ruled, that Justices of the Peace might lawfully do.

Doctor and Student, written by St. *Germint*, a learned and discreet man, and well read both in the Common, Civil and Canon Laws, as the Lord *Cook* affirms: of him *Bale* saith, *Christopherus Segni armaine, aliis de Sancto Germano; illustri prosapia oriundus, socius olim Interioris templi in Suburbiis Londinensibus, eo eruditionis illic pervenit, ut ab ejus urbis civibus immortalem sit assecutus famam. Homo erat omnium consensu in patriis legibus, & in jure tam Canonico quam Civili, excellenter instructus, in omniq;*

Philosophia, atque [illegible] *ratibus doctissimus* [illegible] *cundum, amplum ac* [illegible] *erit ingenium, & quam* [illegible] *bus agendis prudentiam, tota nimirum Anglia novit.* [*Christopher* St. *Germine* (saith he) risen of an illustrious Stock, formerly of the Society of the *Inner Temple* in the Suburbs of *London*, arrived at that heigth of Learning, that from the Inhabitants of that City he got immortal praise. He was a man by the consent of all, excellently learned, both in the Laws of his own Country, as also the Canon and Civil Laws: very learned likewise in Philosophie, and the other Liberal Sciences. What a copious and large Wit he had, and what Gravity and Prudence in his Actions, all *England* knew.] It is a Book very profitable for the Knowledge of the Nature, Grounds, and Diversity of Laws; especially the Grounds and Reasons of the Laws of *England*.

Mr. *Stamford's* Book containeth two Parts; One, of the Pleas of the Crown;

...er, of the Kings ... him (saith Mr. ... is force and weight, and the common kinde of Stile: in Matter very few have gone beyond him, in Method none have overtaken him; in the order of his Writing he is smooth, yet sharp; pleasant, and yet grave. And surely his Method may be a Law to the Writers of the Law that succeed him.

Rastall's Book of Entries is a Book tending very much to the ease and furtherance of the Professors of the Law.

The Lord *Brooks* Abridgement was gathered first for his private Use, and published long after his decease. A worthy and painful Work; and, as the Lord *Cook* saith, an excellent Repertory of the Year-books of the Law. And herein he is more compendious then *Fitz-Herbert*, who in a brief manner gives the Reasons on either side, but *Brook* delivers onely the point adjudged; and where it is doubtful, and no Judgement given, his own Opinion. And Mr. *Fulbeck* saith,

saith, That where *F*[illegible] understood, he profi[illegible] his Abridgement hath [illegible] though the other hath more Veins.

In Mr. *Perkins* are many commendable things, delivered by a ready Conceit, and a pleasant Method. Many excellent Cases which savour of great Reading, and good Experience.

Mr. *Theobals* Digest of Writs, is a very sound and painful Book: For saith Mr. *Fulbeck*, in handling one Title of the Law, he hath dealt so painfully, that no point can be named concerning that Title which he hath not discussed; nay, to give him right, hath not fully discussed.

Mr. *Plowdens* Commentaries consists of two Parts, both of them learnedly and curiously published. Works (as they well deserve) with all the Professors of the Law, of high accompt. The Author whereof (saith the Lord *Cook*) was an ancient Apprentice of the Law, of great Gravity, Knowledge and Integrity. It is a Work full of Argument and plainness of Proof.

The

's Reports, contai-
and summary Colle-
Reverend Judge, Sir
Knight, Chief Justice of
the Court of Common Pleas, for his
private Use and Remembrance, were
as he left them imprinted after his
decease. A Work full of Pleasure,
Diversity and deep Learning.

Master *Lambards* Pains, Learning
and Law, appear by his Books, (saith
the same Mr. *Fulbeck*,) and are con-
ducted by so curious a Method, and
beautified with such Flowers of
Learning, that he may well be sorted
amongst them to whom the Law is
most beholden. His Stile runneth
like a temperate Stream: his excel-
lent Knowledge and Use of Anti-
quities, as his Saxon Laws, argue no
small Reading, and a singular Con-
ceit. Of his *Justice of the Peace*, the
Lord *Cook* saith, *Master* Lambards
*Collection of the Office of the Justices
of the Peace, methodically written, was
published towards the end of the reign
of Queen* Elizabeth. In this Book,
though briefly, yet he fully handleth
the subject-matter. Mr.

Mr. *Cromptons* Books (from Mr. *Fulbeck*) are the Produ[illegible] stry, especially the *J*[illegible] *Courts*: they are so compendiously collected, that a man by a few hours perusal of them, may gain great Knowledge.

The Lord *Cooks* Works, that is to say, his *Institutes*, containing his *Commentary upon Littleton*, his *Exposition of Magna Charta*, and other ancient Statutes, his *Pleas of the Crown*, and *Jurisdiction of Courts*, his *Books of Entry*, and *Reports*, shew no less Industry, then a singular good Method, and profound Judgement. Books that very well deserve the name of Pillars of the Law. And as once it was said of *Virgil*, that if all the Sciences had been lost, yet might they have been found in his Books; so certainly it may be said (and more truely) of his Works, That if the Theory of the Law had been lost, it might easily have been found therein. His *Reports* contain such diversity of matter, and that so profound and fundamental, that whosoever is

versed

... do no less then ... Lawyer. A man he ... moderate spirit, (well ... his Motto, *Prudens qui Patiens*) that he weighed the Balance so justly between the Soveraigns Prerogative and the Subjects Priviledge, that each party challenge him for their own. To say more of him, were to say too little, and put an Affront upon the World, to suppose they neither knew him nor his Works.

Crooks Reports, and that worthily, ought to be named in the next place, whereof there are two Volumes extant, and a third promised. Reports of as good matter, and artificial brevity, as any extant; yet so full, that scare any thing worthy of note is omitted; especially the second part, containing more matter of Law, then those that are of thrice the bulk; and are the rather to be esteemed much of, because they are the products of Critical Times. The Certificate of the Judges in that behalf, is sufficient to manifest of what worth those Books are.

The

The Reports of the L[illegible] and *Hobart*, both Chief Justices in their respective places, contain matter profound, yet with convenient brevity: Works of great Authority and Use. Of Sir *Henry Hobart*, Justice *Cook* hath this *Encomium*, That *he was a most learned, prudent, grave and religious Judge.*

The like may be said of the Reports of *Owen*, *Hutton* and *Winch*, Justices formerly of the Common Pleas, being very sinewie, containing almost as much matter as words; very concise and pithy, pleasant and profitable for reading; no ways either difficult to the Apprehension, or burthensome to the Memory.

Sir *Thomas Hetley*'s Reports are likewise profitable for Reading, he being one set apart for that purpose.

Mr. *Brownlow*'s Reports are very pithie, containing both good and various matter, and therefore are safely concluded useful.

Mr. *Leonards* Reports published by Mr. *Hughs*, contain, as himself saith, many excellent matters and points

[illegible] Law, and have been ap- [illegible] the perusal of learned [illegible] in their course of practice.

Mr. *Bulstrodes Reports*, whereof there are three Parts, shew no little pains, wherein he hath followed Mr. *Plowdens* manner of Reporting, by fulness of Argument and plain kind of Proof, learnedly composed; the perusal whereof will very much improve our Students knowledge.

The Reports of Sir *James Lea*, Sir *John Bridgeman*, Mr. *Lane*, Mr. *March*, and Mr. *Styles*, all lately published, are likewise to be numbred among those, wherewith our Student ought to be furnished.

And above all, he is to be well studied in those *Repositoria Juris*, the Year-books, and Terms, or Annals of the Law; Books, as Mr. *Plowden* saith, collected by four able men, appointed for that purpose, who yearly received stipends from the King for their reward, and conferred all together at the making and setting forth of their Reports. These Reports

begin

begin with the Reign [illegible]. (though there are some [illegible] ses of elder times scattered [illegible] Abridgements since the time of *H.* 3.) And they are these, The Year-books of *E.* 3. of *H.* 4. of *H.* 5. *H.* 6. *E.* 4. *E.* 5. *R.* 3. *H.* 7. *H.* 8. And these are of greatest use and authority; for *out of these old Fields* (saith the Lord *Cook*) *springs the new Corn.* The Judges of those times were very learned Men in all sorts of Sciences, as easily appears by the Books, containing deep Points of Knowledge.

And as for the Abridgements, though they are of great use, yet as the same Lord *Cook* saith, *Compendia sunt dispendia*, Abridgements in some Cases mistaking the state and truth of the Question, and sometimes the right reason and rule of the case utterly mistaken. Therefore *Satius est petere fontes quam sectari rivulos*; it is better and safer sailing in the main Sea, then in rocky Havens. When the whole Case is set down at large, with all the Circumstances

[illegible] and Reasons of either [illegible] in question is easily apprehended, and many Rules of Law collected by Inference, which out of an abridged Case cannot be done; and consequently the pleasanter for reading, according to that of the Poet,

Dulcius ex ipso fonte bibuntur aquæ.

The *Book of Assize* is a Book of great authority in Law, and is so called, because it containeth principally Proceedings upon Writs of *Novel disseizin*, *Litt.* 198.

Justice *Yelverton's Reports*, lately published in the Lawyers own Dialect (I mean the French) contains matter worthy such a grave Judge, and learned Publishers.

The *Statutes at Large* are likewise very necessary for our Student, that when he meets any Case upon the Statutes, he may turn to that Statute and peruse the same, and so the better understand the Case, and Reasons thereof.

And

And what [illegible] are extant, though [illegible] not of great Authority, yet [illegible] will they give great Information in matters of Law, to those that peruse them. Nevertheless the Reader ought to be wary, and weigh what he reads before he subject his Opinion, lest they obtrude upon him any Opinion contrary to Law. For saith the Lord *Cook*, *I like not those that stuffe their minds with wandring and masterless Reports, for they shall finde them too soon to lead them to error.*

And here our Student hath a Catalogue of all or most of the Books requisite for the Study, which are about fifty in number, not very many nor great, most of them being but of small bulk or Volumes, therefore not so great labour to read over, as may not be compassed in a considerable time. And herein are we happy, that we are not troubled with the many and vast Volumes written of the Civil Law, whose Professors confess, that their Law is a Sea full of Waves, the Text whereof being

[illegible] so many Volumes, and so many Doctors interpreting the Text, and twice as many more Commenting upon their Interpretations, and so Gloss upon Gloss, and Book upon Book, and every Doctors Opinion being good Authority, fit to be vouched among them, must needs breed distraction of Opinions, and uncertainty in that Law. The like may be said of the Canon-Law, albeit the Text thereof be scarce four hundred years old. And saith one, *If Littleton had been an Author in the Civil or Canon-Law, I dare say there had been by this time so many Comments and Glosses made upon him, as the Books written upon this Book only, would have been more in number, then all the Volumes of our Law at this day.*

Sir J. Davies in prefat. ad relat.

And our Student ought to be furnished with the whole course of the Law: all these Books, saith the Lord *Cook*, are not only for his set reading, but that also, when Cases are argued, and these Books cited, he may turn to the several places, and see

see how they ma[illegible] fo[illegible] Point in question. [illegible] such Cases, which in the Bo[illegible] cannot well understand, the very Point in question, for which purpose they are cited, may serve him in stead of a Glos thereupon. But *caveat studiosus*, that he do not so apply himself to these, so as to neglect his set and constant course of reading.

CHAP. IV.

The Method of Study.

THe Law is a Labyrinth, and certainly, if there be any, Method is that *Ariadne's* Clew that muſt lead us out of it. By Method I mean that Syntax and Diſpoſition of Studies, whereby we know in what order to purſue the ſame. Without this, be our Parts never ſo excellent, and Indeavours never ſo inforced, yet are they of little worth: for we cannot attain any great meaſure or clearneſs of knowledge. This Art of Method will ſupply many defects; and *Claudus in via antevertit curſorem extra viam*: A man, though lame, in the right way, will eaſily outrun the nimbleſt if he miſtake his Race. He that goes to work methodically, ſhall ſooner compaſs the Circle of this Study, then he that uſes no Method can

can cross the D[illegible]. [illegible]
Galen well under[illegible]
great Importance it [illegible]
Matters with Order a[illegible]
writ a Book, to teach the manner
that was to be held in reading his
Works, to the end his Readers might
not be tangled in confusion. And
as the Lord *Cook* saith, *The uncer-
tainty of the Law, and the insufficiency
of the Professors, doth arise out of
that* Præpostera lectio, *the confused
reading, that most use in their Studies.*
In order therefore to our Students
greater Proficiencie herein, in read-
ing he must observe the Lord *Bacons*
Rule, to begin with the easiest, and
so to proceed to the more difficult;
to begin with the Terms of Art, and
then to the Matter. For the Terms,
Cowell's Interpreter, and *Rastall's
Terms of the Law*; and for both, the
Lord *Cook's Commentaries*; and of
them, that upon *Littleton*, as he him-
self tells us, they are *Cunabula Le-
gis*, [the Cradles of the Law] to
be used in the beginning of this Stu-
dy, and is the first Book our Student

Concerning
he tells us his hope is,
g Student, who hereto-
ing at the first, and wre-
ing with as difficult Terms and
Matter, as in many years after, was
at the first discouraged, (as many
have been) may by reading those
Institutes have the difficulties and
darkness both of the Matter, and
Terms or Words of Art in the be-
ginning of his study facilitated and
explained unto him, to the end he
may proceed in his Study chearfully
and with delight. In the reading
whereof his Rules are these; That
before he read any of the Commen-
tary upon any Section, that first he
read again and again the Author
himself in that Section, and do his
best indeavour, first of himself, and
then by conference with others,
(which is the life of study) to un-
derstand it; and then to read the
Commentary thereupon; and no
more at any time, then he is able
with delight to bear away. And al-
beit the Reader shall not at any one
day

day (do he what he [illegible] to the meaning of the A[illegible] Commentary, yet let him no[illegible] rage himself, but proceed; [illegible] some other day, in some other place, that doubt will be cleared. And when our Student, by the reading of these and the like explanatory Books, is enabled and armed to set upon the Year-books or Reports, he must begin with the latest, as being the fittest to season our Students memory withall. Wherein the controverted Points in the old Books, being left for Quæries, are resolved, and Cases more suiting with the complexion of the Commonwealth are upon solemn Arguments adjudged; and this is of great importance: for if he should begin with the old Books, wherein many Points of Law are obsolete, and altered by late Statutes, and repugnant to daily experience, and many Circumstances in matter of practice abolished, our Student would be drawn away by their Authority, to the Lanes and by-paths of Errour, of which

denly rid him-
self.

Quo semel est imbuta recens servabit odorem
Testa diu ——

And that is observable which Naturalists say, That the Memory is *Tabula rasa*, a plain Table, and as blank paper, wherein nothing is written; and that it is most retentive of those Figures that are first impressed thereon: Therefore it behoves our Student to see that those first Rudiments and Opinions he obtrudes by the authority of the Reporters upon his Judgement and Memory, be sound and wholsome Principles, those being indeed the foundation of his Study. And saith the Lord *Cook*, *For the most part, the latter Judgements and Resolutions are the surest, and therefore fittest to season him withall in the beginning, both for setling of his Judgement, and retaining them in Memory.*

When our Student hath passed

over

over the late Reporters [illegible] Lord *Cook* injoyns him the [illegible] of the ancient Year-books [illegible] terms: *To the Reader*, ſaith he, *mine advice is, that in reading of theſe new Reports, he neglect not in any caſe the reading of the old Books of Years, reported in former Ages: for aſſuredly* (*as is ſaid already*) *out of the old Fields muſt ſpring and grow the new Corn.* And that of *Macrobius* is very true; *Multa ignoramus quæ non laterent, ſi veterum lectio nobis eſſet familiaris*: [That if we were accuſtomed to the reading of the ancient Books, we ſhould not be ignorant of ſo many things,] eſpecially conſidering that hence is learned the Reaſon of the Law. And the reading of the Reports, of all other Books, is moſt beneficial; for they ſet open the windows of the Law, to let in that gladſome light, whereby the right reaſon of the Rules (the beauty of the Law) may be clearly diſcerned; they broke the thick and hard ſhell, whereby with pleaſure and eaſe the ſweetneſs of

Macrob. l. 6 Saturnal.

the [illegible] several Cases may be [illegible]; and adorned with [illegible] fruits both pleasant and profitable, the store-houses of those, by whom they were never planted nor watered.

And when our Student is well setled in Judgement in the Fundamental Points of the Law, it will be very necessary for him, not onely for further Information, but also for Ornament, after the reading of these, to read over all the ancient Authors that have written of our Law; especially if he aim to attain to the Knowledge of a compleat Lawyer. Litt. 249. b

For the well-ordering of his Study, he is to beware that he take not (especially at the first) too high a strain; for in a diffident Nature it discourages, in a confident it breeds an opinion of Facility, and so a sloth and neglect; and in all Natures, a further expectation then can hold out, and so an insatisfaction in the end. *Soft and fair, goes far*, saith the Proverb; and those that are slow and deliberate in their Reading, are commonly

monly sure in their Judgements. And those that are used to ride post in their Studies, *omnia cursim & properantes transmittere*, (as *Seneca* saith) cannot attain any depth of Knowledge; for that of Learning is an involved intricate way: and certainly he had need be more deliberate then active, who in so ill Ground will make good haste and good speed together. *In labyrintho properantes ipsa velocitas implicat.* He is not the likest man to run out of a Maze, that runs fastest. And an over-nimble desire, is like the Stomach of a sick man newly recovered, more greedy then strong, and fuller of Appetite then Digestion; whence arise immature and unconcocted Counsels, blinde and unsetled Resolutions. Nor on the other side too weak a strain; for then he must not look to perform or overcome such a great Task, but he must keep in a Mediocrity between both. He must read not to contradict and confute, nor to believe and take for granted, but to weigh and consider; for slow-

neſs of Belief, and Diſtruſt, are the Sinews of Knowledge: Impatience of Doubt, and haſte to Aſſertion and Reſolution, without due and mature Suſpenſion of Judgement, are of dangerous conſequence; for he that begins with Certainties, ſhall end in Doubts; but if he be content to begin with Doubts, he ſhall end in Certaintie. But herein he muſt avoid extreams, that on the one ſide he fall not into the vein of *Villeius* the Epicurean, of whom it is ſaid, *Nil tam metuens quam ne dubitare aliqua de re videretur*: [He feared nothing more then that he ſhould ſeem to make a doubt of any thing.] Nor on the other ſide into *Socrates* his *Ironical* doubting of all things, but to propound and receive things ſincerely, with more or leſs Aſſeveration and Credit, as they ſtand in his own Judgement proved more or leſs: to balance Reaſon on both ſides, and to turn back the firſt Offers and Conceits of the mind, and to accept of nothing but examined & tryed. In other Sciences there is not ſo much heed

to be given as in this; for if in them he erres in Opinion, and winds his Thread upon a wrong Bottom, he commits no Crime onely against Truth; but in this it doth not rest within him; but if he be erroneous in his Opinions, he may be very injurious to the Commonwealth, both to the Lives and Estates of the People. Neither do I hereby intend that he ought not to labour to a certainty in all Points, even in those that pass for Doubts: according to *Littleton*,

Quaras de dubiis legem bene discere si vis,
Quærere dat sapere, quæ sunt legitima vere.

And the Lord *Bacon* reckons it a great fault peculiar to Lawyers and Scholars, that when a Doubt is once received, they labour rather how to keep it a Doubt still, then how to solve it, and accordingly bend their Wits: *Of this* (saith he) *we see familiar Examples in Lawyers and Scholars,*

Scholars, both which if they have once admitted a Doubt, it goeth ever after authorized for a Doubt. And if in Points of difficulty Reason be so equally divided, that it is beyond his Decision, let him (as it is said already) suspend his Judgement till some other time and place make it clear unto him. Nor must he think at the first incounter to resolve all Doubts, and reconcile all seeming Contrarieties: for he must observe that the Knowledge of the Law is a very deep Well, out of which each man draweth according to the strength of his Understanding; he that reacheth deepest, (maketh the greatest progress therein) seeth the amiable and admirable Secrets of the Law, wherein the Sages of the Law in former times had the deepest reach. And as the Bucket in the depth is easily drawn to the uppermost part of the water, for, *Nullum elementum in suo proprio loco est grave*; but take it from the water, and it cannot be drawn up but with great difficulty: So albeit in the beginning of this

Litt. Com. 96. a.

this study these things seem difficult, yet when the Student can dive into the depth (I do not say bottome) it is delightful, easie, and without any heavy burthen, so long as he keeps himself in his own proper Element, that is, his Profession. Yet some advise, that the Student upon the first onset of a Book, should read it over cursorily, especially if of difficulty, as a Preparatory to a more serious and deliberate perusal, that upon his second Incounter, there be nothing left for his inquirie, but those things that are difficult and weightie. However, in every Case he must observe three things; first, the matter of Law resolved, and that not only the Point in question, but also such Rules as by Inference may be deduced thence, which may suffice hereafter for his furnishing in the way of practise: for he cannot expect to finde every Doubt resolved *in terminis*. By such Rules I mean the Reasons of every Resolution in any Book-case, being reduced into short Sentences, Propositions, or summa-

Conclusions. Quoniam brevitas [illegible] delectat, & quæ compendiose traduntur tum: addiscuntur facilius tum diutius retinentur, universa legis sententia in tenuem sive summam redigenda est. And all Rules drawn out of the Law are of two sorts, either being a Rule drawn from the Reason of the Case, or the Case it self shortly contracted.

For the first. A Man hath for him and his Heirs the nomination of a Clarke for a Church to an Abbot, and the Abbot ought to present other the Clarke nominated, to the Ordinary. Now the King having the possession of the Abbie, presented his Clarke to the Church being void, without any nomination. And the Opinion of the Court was, That the Party which had the nomination shall have a Quare Impedit onely against the Incumbent, without naming any Patron.

Whence may be drawn these Rules and Reasons.

1. That

1. That the King cannot be sued as a Disturber.

2. That where the King presents by wrong, the *Quare Impedit* shall be only against the Incumbent, without any Patron named.

3. The King cannot be an Instrument to any man as his servant.

4. By the King every Subject hath Justice done him. See *Dyer* 33. H. 8. 48.

Tenant in tail of a Mannor, to which Villaines are regardant, infeoffed one of the Villaines of one Acre parcel of the Mannor, and dies; albeit the Mannor descends to the Issue in tail, yet he cannot seize his Villain till the Acre be recovered.

Whence flow these Propositions.

1. That when a man hath one thing by reason of another, there he shall have no benefit of the Accessary till the Principal be recovered.

2. Regardancy or Appendancy is not only to the whole Mannor, but to every Acre of the Demeanes.

3. A

1. A necessary Suit had by the Lord against his Villain, doth not infranchise him. Although none of these Propositions be expressed in the Case, yet are they necessarily implied and drawn thence by Inference. And most commonly the Point resolved is not the tithe of the Law in the Case, as in the Commentaries in *Reingier* and *Fogossa's* Case, the Point being only this, whether a conditional Agreement were an Agreement within the Statute of And there we have these Points; That a Concord Executory is no bar in Trespass, because it doth not sound in satisfaction, *fol.* 5. *a.* That where a Deed is pleaded, it must be shewn in Court, that the Court may judge of its validity. 7. *b.* That to plead new matter subsequent to the Bar, is a Departure. 8. *a.* That it is not necessary to aver that, which of necessity must be intended. 8. *b.* That the Law punisheth not where there is a necessity for the doing of it. 9. *b.* That Statutes, although penal, shall be construed according

according to the intent of the Makers. 10. *a.* And many more, which for brevity sake I omit.

For the second sort of Rules, the Case contracted, as for Instance: That long Case of the Lady *Hales* and *Pettite* in the Commentaries, may be drawn to this short Rule; **That if a Lease be made to two jointly for Years, and one is felo de se, it shall not go to the other by Survivorship, but is forfeited to the King.** Ployd. 257. b.

The second thing to be observed is, the reason of the Law, and resolution of the Case. For Reason is the life of the Law, and the Common Law it self is nothing else but Reason; which is not to be understood (saith the Lord *Cook*) of every Mans natural Reason, for, *Nemo nascitur artifex*, but an artificiall perfection of Reason; and this legal Reason is *summa ratio*, and therefore if all the Reason that is dispersed into so many heads were united into one, yet could he not make such a Law as the Law of

England

England is, because by many successions of Ages it hath been fined and refined by an infinite number of grave and learned Men, and by long experience grown to such a perfection for the Government of this Realm, as the old Rule may be justly verified of it, *Neminem oportet esse sapientiorem legibus.* And the same Author saith, that *Ratio est anima legis*, [Reason is the soul of the Law] for then we are said to know the Law, when we apprehend the Reason of the Law, that is, when we bring the Reason of the Law so to our own Reason, that we perfectly understand it as our own; and then, and never before, we have an excellent and an inseparable property and ownership therein, as we can neither loose it, nor any man take it from us; and will direct us very much, the learning of the Law being so chained together in many other Cases. But if by his Study and Industry, he makes not the Reason of the Law his own, it is not possible for him long to retain it in memory: for

(saith

(saith the Lord *Cook*) *The reason of the Law is the life of the Law: for though a man can tell the Law, yet if he know not the Reason thereof, he shall soon forget his superficial Knowledge; but when he findeth the right Reason of the Law, and so bringeth it to his natural Reason, that he comprehendeth it as his own, this will not only serve him for the understanding of the particular Case, but of many other; for* Cognitio legis est copulata & complicata, *and this Knowledge will long remain with him.* 1 Inst. 183. b.

The next thing to be observed in reading, is, the manner of Pleading. For saith the Lord *Cook*, *It is a necessary part of a Lawyer to be a good Prothonotary.* Litt. 304. a. And this is not without praise: for saith *Littleton*, *It is one of the most honourable, laudable, and profitable things in our Law, to have the Science of good pleading in Actions real and personal.* And his Counsel is to the Student, his *filius Artis*, to imploy his courage and care to attain the same; which his

hit Commentary ſaith, is obtained three manner of wayes. 1. By Reading. 2. By Obſervation. 3. By Uſe and Exerciſe: *For in ancient times* (ſaith he) *the Serjeants and Apprentices of Law did draw their own pleadings, which made them good Pleaders.* Many a good Cauſe is daily loſt, and infinitely delayed, for want of good and orderly pleading; which if it were ſuffered to be done according to every mans fancie, it would bring all into confuſion; for in the pleadings are moſt viſibly diſcerned the Reaſons of the Law. Though in the Reign of *E.* 2. *E.* 1. and upwards, the Pleadings were plain and ſenſible, but nothing curious, having chief regard to the Matter, and not to Forms, which were often holpen with a *Quæſitum eſt*, and the Queſtions moved by the Court, and the Anſwers of the Parties, were alſo entred in the Roll. But the Judges finding the inconvenience that was like to enſue, in the Reign of *E.* 3. Pleadings grew to perfection, both

Litt. 304. b.

without

without lameneſs and curioſity: for then the Judges and Profeſſors of the Law were excellently learned, and therefore ſaid Juſtice *Therming* in *H.* 4. that in the time of *E.* 3. the Law was in a higher degree then it had been at any time before; for (ſaith he) before that time the manner of Pleading was but feeble in compariſon of that it was afterwards in the Reign of the ſame King. And in the time of *H.* 6. the Judges gave a quicker ear to Exceptions to Pleadings, then their Predeceſſors formerly did, or their Succeſſors ſince have done.

In the next place, he muſt in his courſe of Reading obſerve the Affections of the Law: as, that it favours Life, Liberty, and Dower; and that it hates private Cuſtomes, and Force, according to that of *Cicero*, *Nihil eſt exitioſius Civitatibus, nihil tam contrarium juri & legibus, nihil minus civile & humanum, quam in compoſita & conſtituta Republica quicquid agi per vim.* [Nothing is more deſtructive to a City, nothing

thing so contrary to Laws and Right, nothing more uncivil and inhumane, then in an orderly and well contrived Commonwealth any thing to be done by force.]

He must likewise bring his Understanding answerable to the intention of the Law, and to this purpose often to consider the Fictions of the Law; which (saith Mr. *Fulbeck*) the Common Law of *England* doth shew wonderful sharpness in, and a most excellent subtilizing things, whereof common sense hath but a confused knowledge. As, that a Term and a Freehold of the self same thing, may be both in one Man at one time. As, if Tenant for Years die, having made his Executor, and he purchase the Reversion, here both the Term and Fee-simple are in the Executor, to several purposes. So of a Remitter to Land to some intent, but not to another. As, if Tenant in tail discontinue, and his Son and Heir apparent disseizeth the Discontinuee to the use of the Father, the Tenant in tail

Prepar. pag. 45.

43.E.3.27.

12.E.4.21.

tail dieth, the Son is in by his Re-mitter against all but only the Re-continuee. That a title may be executed to one intent, yet not to another. That a thing may be extinct and in esse at one time, in divers respects. That if the Disseizée come upon the Land at the request of the Disseizor, without any more, it is no Entry; and many such like.

He must likewise carefully observe the diversities and differences of Points and Matters of Law: for these are the surest Weapons a Lawyer is to be armed withall. For instance: It is true that the Ordinary hath power of placing and displacing of Seats and Isles in a Church. But with this Diversity, That where an Inhabitant and his Ancestors only, have used time out of minde to repair an Isle in the Church, to sit there with his Family, and to hear Divine Service, and to bury there, this makes the Isle proper and peculiar to his house, and he cannot be displaced Crook pag. 367.

by the Ordinary. But conſtant ſitting and burying there, without uſing to repair, doth not give any Property: but the Ordinary may appoint whom he pleaſeth to ſit there.

Ployd. Comment. 137.b. So if a Leaſe for Years be made reſerving Rent, and for non-payment a Forfeiture of the Term, there is a Diverſity. If the Proviſo in the Leaſe be, that if the Rent be behind, the Leſſor ſhall reenter, there Entry is requiſite, and before Entry the Leaſe is good: but if the words be, that the Leaſe ſhall be void, there Entry is not requiſite, for it cannot be made good by any after-Act. Razure of a Deed by the Party, though in a place not material, makes the Deed void.

1. Croke. But with this Diverſitie (ſaith Juſtice *Berkley*) If a Leſſee for Years raze his Leaſe in a place not material, it makes the Deed void, ſo that the Leſſee can take no advantage of any Covenant, &c. of the Leſſor in the ſame Deed; but the Deed is not void as to the Eſtate: for notwithſtanding ſuch razure

ſalure, the Eſtate is good. This indeed is an ingenious diverſity, but *quere*, whether according to Law, for Juſtice *Cook* doubted thereof.

He muſt likewiſe conſider the ends of the Law. *Inventæ ſunt Leges ad ſalutem Civium, civitatumque incolumitatem, vitamque hominum & quietam & beatam.* [The Laws, ſaith *Cicero*, were invented for the preſervation and ſafety both of City and People, that they may live a quiet and happy life.] The end of the Law is to ſettle and maintain Property, and alſo to preſerve the Perſons as well as the Eſtates of Men, and to diſpoſe every thing for the good of the Commonwealth. And therefore favours thoſe things that are done for the good of the Commonwealth. As, if a Man kill a Felon in purſuit, if he cannot otherwiſe take him, is not criminal; ſo he may kill in defence of his Perſon, or Goods, as if one attempt to rob him. On the other ſide, it hates things that are deſtructive to the Commonwealth in a Cicero de leg. l. 4.

more especial manner; as all publick Wrongs, Monopolies, and the like.

In a word, he must passe by nothing that is worthy the observation. As definitions of things, the placing of words in Deeds, and Wills, and the like; the latitude and extent of those words, as also their omission and addition. For, saith the Lord *Cook*, *There is nothing, seem it never so useless, but will stand our Student in stead some time or other.*

Prepar.c.4 Mr. *Fulbeck*'s Rules to be observed by our Student are these.

1. That in the understanding of the Law, he must not vary or depart from the proper sense and signification of the words, unless thereby some Absurdity, Inconvenience, or Injustice may appear.

2. That where the Law is obscure, that sense must be taken which is least prejudicial.

3. That when Opinions are repugnant, it is the safest way to follow that Opinion which is most agreeable to Reason.

4. That

4. That the best Interpreter of the Law, is common Reason and Intendment.

5. That things which be odious in Law, must be restrained, and the things which be favourable inlarged.

6. That when a thing is forbidden, all things that follow thereof are likewise forbidden.

7. The validity of an Act must be specially favoured, unless there be manifest nullity in the proceedings. But these indeed are rather Rules of Law then Study, yet certainly worthy of our Students consideration.

In Reading, our Student must not give himself over to such Books as are besides his study, much lesse that conduce nothing to it. He must not be at one Book to day, and another to morrow, wandring like a sickly Stomach, that hath an Apperite to all things, but can digest none. *Nusquam est qui ubique est.* [He that is every where is no where] And if fickleness weary him from one Book to another, let him follow *Seneca's* advice; *Probatos utique libros sem-*

per legem fæminæ ad alios divertere libet, ad priores redi. [Read alwayes approved Authors; and if thou be minded at any time to change them, be sure to return to the first,] to keep your self alwayes within the Circle of approved Authors. Nor do I deny any moderate use of other Books, so far as they serve to recreate a weary Minde, as certainly they are the best for that purpose, according to that of *Seneca*, (*Alit lectio ingenium, & studio fatigatum, non tamen sine studio reficit.* [Reading nourisheth the Understanding; and when it is wearied with study, yet is not refreshed without study]) but no further. To turn Spie, but no Inmate. *In aliena castra transire*, (with the same Philosopher) *non tanquam transfuga, sed tanquam explorator.* And of such, Histories which demonstrate the Government and Laws of Nations, are most advantagious for his perusal, especially the Chronicles of the Kings of *England*, and the Histories of the particular Counties, which contain most

of

of the private Customes used in each Shire, which will give great light towards the understanding of the ancient Books of Law. For saith the Lord *Cook*, *Oftentimes, for the better understanding of our Books, the advised Reader must take light from History and Chronicles, especially for distinction of times.* Litt. Com. 43. a.

The next thing our Student must observe in his course of study, is Writing. Reading must not be his only business, but he must put what he reads into writing. *Nec scribere tantum* (saith the Philosopher) *nec tantum legere debemus: altera res contristabit, & vires exhauriet, de stilo dico, altera solvet ac diluet. Invicem hoc illo commutandum est, & alterum altero temperandum, ut quicquid lectione collectum est, stylus redigat in corpus.* [We ought not to write only nor read only: the one renders the Work sad and melancholy, and doth exhaust the Spirits, I mean Writing; the other doth loosen and dissolve them. We must by turns change one with the other, and temper this Seneca.

that what soever we have gotten by Reading, Writing may resolve into a body.] And saith the Lord *Cook*, *Reading, hearing, conference, meditation, and recordation, are necessary to the knowledge of the Law, because it consisteth upon so many and almost infinite particulars.* But an orderly Observation in writing, is most necessary of them all; and he that at length by these meanes, shall attain to be learned, when he shall leave off quite for his gain or his ease, soon shall he (I warrant him) loose a great part of his learning, without orderly observation in writing. Our Student therefore must out of his Reading extract Aphorismes and Rules of Law; which manner is very advantagious to improve a mans Knowledge: for first, it trieth whether he be superficial or solid: for Rules and Aphorismes, except they should be ridiculous, cannot be made but of the pyth and heart of Sciences; for discourse of illustration is cut off, Recitals of Examples are cut off, description of practice is cut off: so there

there remaineth nothing to fill the Rules and Aphorisms, but some good quantity of Observation. And out of these Aphorisms and Rules must he make a Common Place; for saith the Lord *Bacon*, *Pleaders should have the places whereof they have most use, ready handled in all the variety that may be.* And *Cicero* himself being broken into it by great experience, delivereth it plainly, That whatsoever a man shall have occasion to speak of, if he will take the pains, he may have it in effect premeditate and handled in these Common Places, so that when he cometh to a particular, he shall have nothing to do, but to put to names, times, and places, and other circumstances of individuals. And therefore the larger our Students Anticipation is, the more direct and compendious is his Search. And if upon every occasion a Practiser should be to look into the vast body of the Law for resolution, I doubt he may stay long enough without his errand. Therefore must this great Deep be

De. aug. Scient.

De Oratore.

drawn out into Rivulets, through which we may easily wade. *Ingens corpus ejus* (saith *Seneca*) *in membra dispani debet.* This great body must be disposed into members or parts; which being done, we may the easier attain the knowledge of the Law. And herein must we imitate the Bees, which gather from every Flower what is fit for their purpose, and then whatever they gather they dispose and digest into Hives. *Apes debemus imitari, quæ ut vagantur & flores ad mel faciendum idoneos carpunt, deinde quicquid attulere disponunt, ac per favos digerunt; Ita debemus quæcunque ex diversa lectione congessimus separare: melius enim distincta servantur.* [So should we do, that whatsoever we gather from diversity of reading, we should separate: for being so digested and distinguished, they are the better retained.] For the whole being (as it must) confusedly read, if the matters be referred to their several places, are fitter for consideration and meditation. *Quæ in universo*

Sen. Ep.

confu-

confusius videbantur, in partes divisa diligentius considerantur. Et hominis facilius per partes in cognitionem totius adducuntur. [What seem confused in general, being divided into parts are more diligently considered. And men are easiest brought to the knowledge of the whole by the parts.] And Mr. *Fulbeck* saith, that as well for the Students ease, as for preserving and continuing his Memory, it is a profitable course for him, under Titles, to digest the Cases of the Law, into which he may transferre such things as he hears or reads: and other mens Abridgements are little available to such as read little; but that which is got by our sweat and labour, we do firmly retain, and in it we do principally delight. Neither hath there been any Learned and Judicial Lawyer, who hath not made a Collection of his own. Therefore we may conclude, that Common Places are matters of great use and essence in study, as that which assureth Copy of Invention, and contracteth Judgement to

a strength. And herein he must use a method, and analyse the matter with all its parts and incidents. For Method carries a kinde of demonstration in Orbe, or Circle, one part illuminating another. And Method consisteth most of Division: and it helpeth our Student much to make good Divisions; for he that divideth things aright, can never erre in the order of things. *Divisio* (saith *Bracton*) *triplicem operatur effectum; primo enim animum legentis ineitat, secundo mentem intelligentiæ præparat, & tertio artificiosè memoriam reformat.*

Bacon de Aug. Scient.

For the ordering of his Common Place: He must begin with the terms of Art, to imitate the wisdome of the Mathematicians, in setting down in the very beginning the definition, or for want of that, a full description of the Termes. Which being done, then to place the matter with the respective divisions, under the several branches of the definition. And for our Students Instruction in his Definitions, I refer him

to

to Sir *John Doddridge*, which in his *English Lawyer* hath fully explained that Point. And if this order be followed, he may easily finde what he seeks for, without any tedious search. But, *Via longa per præcepta, per exempla brevis.* I will therefore, according to my small measure of knowledge, analyze *Littleton*'s Chapter of *Dower*, with the Commentary, by way of such a Common Place. Which being most of it Expository, wants that diversity of Cases, which reading of the Year-books and Reports affords; and therefore cannot be drawn according to my Method into Rules and Aphorismes; nor do I take in the whole Matter, and all the Cases of the Chapter, but only one or two Points under each Branch, to chalk out the form of such a Common Place. Seneca.

Dower is an Estate of Freehold during the life of a Lawful Wife, appointed out of an Inheritance, whereof she is dowable, which Estate beginneth upon and after

the death of her Husband.

To begin with the Term. Dower is called *Dos* in Latine, *Ex donatione, & est quasi donarium*, because the Law it self, or the Husband of his own assent, giveth it to her. And this word *Dos* at this day is not taken for any thing the Wife brings with her in marriage to her Husband: for if Land, then it is called Frank-marriage; if Money or other Goods, that is called her Marriage-portion. Although formerly *Dos Mulieris* was also applied to them. It is also called *Maritagium*.

I. Dower is an Estate of Freehold during life.

Every one that hath an Estate in any Lands or Tenements for term of life, is called Tenant of Freehold. But every Tenant of Freehold, so called, holds not for life; as Tenants by Statutes, Elegits, *&c.* are said to hold Lands, *Ut liberum Tenementum*, though their Estate is no longer then until their Debts be paid: but they

they have a Similitudinarie Freehold, because they have the same Actions with Tenant of Freehold.

II. Of a Lawfull Wife.

Here three things are to be considered: that is to say,

1. Her Marriage.

First, The Marriage, whether *de jure* or *de facto*, must continue: for, *Ubi nullum Matrimonium, ibi nulla Dos*; if the Marriage be dissolved or discontinued, Dower ceaseth.

1. The Matriage is dissolved by divorce, which is either,

1. *A vinculo Matrimonii*, for some cause before the Marriage, as Consanguinity; and hereby Dower ceaseth.

Or,

2. *A mensa & thoro*, for some cause arising after Marriage, as Adultery: by this Dower doth not cease.

But *Dower ad ostium Ecclesiæ* is not hindred by either.

2. The Marriage is discontinued, if the Wife Elope from her Hus-

Husband until he be willingly reconciled to her.

Elopement is,

1. If she goeth willingly with or to the Avowtrer: this is a departure and a tarrying, albeit she remaineth not continually with the Avowtrer.
2. If she tarrieth with him against her will.
3. If the Avowtrer turn her away.
4. If she cohabit with her Husband by the censure of the Church.

Secondly, If the Marriage be *de facto* and not *de jure*, yet if the Wife be at age, and the Husband die before any Divorce, she shall be indowed.

2. Her Age.

The Wife must be of the age of nine years at the time of her Husbands death, and then shall be indowed, whatsoever age her Husband be of. For though *consensus*, and not *concubitus facit matrimonium*, and consent cannot be by a Woman before

before twelve; or by a man before fourteen: yet it is *Legitimum Matrimonium quoad dotem.* And the Bishop upon Issue joyned in a Writ of Dower, *Quod nunquam fuerunt copulati legitimo Matrimonio*, ought to certifie that they were coupled in lawful Matrimony.

If a Man take a Wife of the age of seven years, and after alien his Lands, and the Wife attaineth to the age of nine years, and the Husband dies, the Wife shall be indowed.

3. Her Capacity.

An Alien shall not be indowed.

If a Man take an Alien to Wife, and after the Husband alien the Land, and after she is made Denizen, the Husband dieth, she shall not be indowed, because her Capacity to be indowed came by denization, after the alienation: but otherwise it is in case of naturalization.

If the King take an Alien to Wife and dieth, she shall be indowed by the Law of the Crown.

If a Free-man take a Neife to Wife, and dieth, she shall not be indowed. If

If the Husband after Marriage alien the Land, and the Wife is attainted of Felony, now is she disabled; but if she be pardoned before the death of her Husband, she shall be indowed.

III. Appointed.

Dower is appointed three wayes. 1. By the Act of Law. 2. By the Custome. 3. By the Act of the party.

Dower appointed by Act of Law, which is called, Dower at Common Law, is an estate of Freehold for the life of a lawful Wife, of the third part of all those Inheritances dowable, whereof the Husband was seized of an Estate of Inheritance during the Coverture, given by Law to be compleat after the death of her Husband.

This special description of Dower at Common Law, takes up all that of Dower in general; therefore waving that, I will prosecute what is additional in this. For the branches of the Definitions are the same, and the Rules and Cases of that

fits

fies this: therefore a Dower is [illegible] already I will not repeat but briefly.

I. Dower is an Estate of Freehold for the life of a lawful wife.

This is the same with the former Description *in terminis*, therefore the Rules and Cases that are comprehended under these Branches may be fetched thence. The difference is from these parts, of a third part, seized, given by Law; which being passed over, the rest makes up the general description.

II. Of the third part.

Of such things as may be divided, the wife shall be indowed of a third part. But of Inheritances that be intire, whereof no division can be made by metes and bounds, though the Woman cannot be indowed of the thing it self, yet a woman shall be indowed thereof in a special manner. As of a Mill, a Woman shall not be indowed by metes and bounds, nor in Common with the Heir, but may be indowed of the third Toll-dish, or *De integro molendino.*

dine [illegible] quemlibet tres mensem: so of [illegible]llain, every third dayes work.

1. **Of all Inheritances dowaable.**

A VVoman shall be indowed of the third part of the profit of Stallage, Fair, Office of the Marshalsea, the keeping of a Park, Dove-house, Piscary, of the third presentation to an Advowson, of the third part of the profits of Courts, Fines, Harriots, Tithes, *&c.*

But in some Cases of Lands and Tenements which are divisible, and which the Heir of the Husband shall inherit, yet the VVife shall not be indowed. As, if the Husband make a Lease for life of certain Lands, reserving rent to him and his Heirs, and he taketh VVife and dieth, the VVife shall not be indowed of the reversion, because there is no seizin indeed nor in Law of the Freehold, nor of the Rent, because the husband had but a particular Estate therein, and no Fee-simple.

If the Husband make a Gift in tail

tail reserving rent to him and his Heirs, and after the Donor takes a VVife and dieth, the VVife shall be indowed of this Rent, because it is a rent in Fee, and by possibility may continue for ever.

Of a Common certain, a VVoman shall be indowed, but not of a Common in gross *sans* number.

Of Rents Service, Charge, and Seck she shall be indowed; but of an Annuity that chargeth only the Person, and issueth not out of Land, she shall not be indowed

A VVoman shall not be indowed of a Castle, that is maintained for the necessary defence of the Realm, because it is not to be divided: otherwise of a private Castle for the Habitation of the Owner.

Of the principal Mansion or capital Messuage the VVife shall be indowed, *Si non sit caput Comitatus sive Baroniæ*, for the honour of the Realm, or publick defence.

In every Case where a Woman taketh a Husband seized of such an Estate in Lands or Tenements, so as by

by posibility the Husbands Issue on her body begotten may inherit the same Tenements, as Heir to the Husband; of such Tenements she is dowable, otherwise not.

III. Whereof the Husband.

If the Husband be an Alien, the Wife shall not be indowed; so if the Husband be the Kings Villain, otherwise of the Villain of a private Person, if the Wife be intitled to Dower before the Entry of the Lord. So if the Husband be attainted of Treason done after the title of Dower, she shall not be indowed.

IV. Was seized.

If the Husband be seized in Deed or in Law, it sufficeth; but one of them he must be.

The Wife shall not be indowed of every Seizin in Law or in Deed. For if there be Grand-father, Father, and Son, and the Grand-father seized of three Acres during the Coverture dies, the Father dies, the Wife of the Grand-father is indowed of one Acre and dieth, the Wife of the Father

Father shall be indowed only of the two Acres residue: for the Dower of the Grand-mother is paramount the title of the Wife of the Father, in case of Discent; otherwise in case of Feoffment; as if the Grand-father had infeoffed the same.

In that case, if the Fathers Wife be first indowed it is otherwise. For if after the decease of the Grand-father and Father, the Son enters and indows his Mother of a third part, against whom the Grand-mother recovereth a third part and dieth, the Mother shall enter again into the Acre recovered by the Grand-mother.

The Wife likewise shall not be indowed of the Land given in Exchange, and the Land taken in Exchange; yet the Husband was seised of both: but she may have her election.

Of a Seizin for an instant a Woman likewise shall not be indowed. As if the Gonnsee of a Fine doth by the same Fine grant and render the Land to the Gonnsor, the Wife of

of the Countee ſhall not be indowed.

If two Joyntenants be in Fee, and one make a Feoffment, his VVife ſhall not be indowed.

V. Of an Eſtate of Inheritance.

A Woman ſhall not be indowed of every Eſtate of Inheritance. For if Tenant in tail general make a Feoffment in Fee, and taketh back an Eſtate to him and his Wife, and to the Heirs of their two bodies; and they have Iſſue, and the VVife dieth, the Husband taketh another VVife, and dieth, this VVife ſhall not be indowed: for during the Coverture he was ſeized of an Eſtate tail ſpeciall.

So if in this Caſe he had taken back an Eſtate in fee, and after had taken VVife and had Iſſue by her, yet ſhe ſhall not be indowed, for that the Fee-ſimple is vaniſhed by the Remitter, and her Iſſue hath the Land by force of the Intail.

VI. During the Coverture.

Seizin is not neceſſary to be continued

tinued during the Coverture, as Marriage must. For albeit the Husband Alien the Lands and Tenements, or extinguish the Rent or Common, yet the VVoman shall be indowed.

VII. Given by Law.

Dower is a provision which the Law casts upon the Woman without any act of hers, and is *præmium pudoris*, therefore favoured by that Law that gives it.

Tenants in Dower ought to be free from Tallage: Tenants in Dower shall not be distrained for debt due to the King by the Husband in his life-time, in the Lands which she holds in Dower. VVith many other Priviledges which the Law indulgeth to Tenants in Dower.

VIII. To be compleat after the death of her Husband.

Mortuo viro confirmatur Dos, [Death is the efficient cause of Dower.

It must be a natural, and not a civil Death. For if the Husband enter into Religion, yet the VVife

ſhall not be indowed until he be naturally dead.

IX. After the Death of her Husband.

By the Statute of *Magna Charta* ſhe ſhall tarry in the chief houſe of the Husband by the ſpace of forty dayes after his death, within which time Dower ſhould be aſſigned her; and this is called a *Quarrentine*. But if the VVife marry within the forty dayes, ſhe looſeth her Dower.

The Aſſignment is either by the Sheriff, by the Kings VVrit, or by the Heir by conſent: to which eight things are incident.

1. That it be certain.

2. It muſt be of ſome part of the Land whereof ſhe is dowable, or of a Rent or ſome other profit iſſuing out of the ſame.

3. The Aſſignment muſt be abſolute, and not conditional.

4. It muſt be made by him that is Tenant of the Land.

5. It muſt be without covin or colluſion.

6. An Aſſignment by a Diſſeizor without

without covin, if not prejudicial to the Disseizee, is good.

7. It must be made by him that hath a Freehold, or against whom a VVrit of Dower doth lie.

8. Before the Guardian in Chivalry enter, the Heir within age may assign Dower.

If no Assignment be made within the forty dayes, and the Husband die seized, the VVife shall recover Damages from the time of her Husbands decease.

The VVife must demand her Dower, else *touts temps prist* pleaded, will bar her of her Damages.

If Issue be joyned upon the Husbands death, it shall be tried by Witnesses, and not by a Jury.

2. Dower by the Custome.

By the Custome of some County the Wife shall have half of the Tenements which were her Husbands Inheritance during the espousals. In some Towns and Burroughs she hath all.

By the Custome of Gavel-kinde, the VVife shall be indowed of the

moiety, so long as she keeps her self sole and without Child; which she cannot wave, and take her thirds for her life.

As a Custome may inlarge, so may it abridge Dower, and restrain it to a fourth part.

3. Dower appointed by the Act of the Party.

1. *Dower ad ostium Ecclesiæ*, which is,

Where a Man of full age seized in Fee-simple, being to be married at the Church-dore, after affiance made between him and the Woman, indoweth her of some part of his Land, and doth declare the quantity and certainty of the Land, which she shall have in Dower.

I. Where a Man of full age.

The Husband at the time of his indowment must be of full age, that is, of one and twenty.

But if he be under age, he may indow her by the assent of his Guardian,

dian, and it shall be good, albeit the Husband die before his full age.

II. Seized in Fee-simple.

If Tenant in Tail indow his Wife at the Church-door, as is aforesaid, this will nothing at all avail the Wife: for after the decease of her Husband, the Issue in Tail may enter upon her possession; and for want of Issue, he in the reversion.

III. At the Church-door.

It is not good if it be made at a Castle, or a House-door, but must be at the Church or Monastery door.

IV. After affiance.

An Assignment of *Dower ad ostium Ecclesiæ* cannot be made before Marriage, for that before she hath no title to have Dower.

This Assignment is good without Deed, because he cannot make a Deed to his VVife.

V. Of some part of his Land.

Anciently it was held, that a Man could not have indowed his VVife *ad ostium Ecclesiæ* of more then a third part, but of lesse he might: but

at the [illegible] may indow her of as much as he list.

VI. And doth declare the quantity and certainty.

A VVoman indowed *ad ostium Ecclesiæ* may enter without Assignment of any; and in all Cases where the certainty appeareth, the VVife may enter without Assignment.

2. *Dower ex assensu patris*; which is,

Where Father is seized of Tenements in Fee, and the Son and Heir apparent, when he is married, indoweth his Wife at the Church-dore, of parcel of his Fathers Lands, with his Fathers assent, by Deed, and assigneth the quantity of the parcels.

VVhere the Father is

I. Seized of Tenements in Fee.

Tenant for life of a Carve of Land, the reversion to the Father in Fee, the Son and Heir apparent of the Father indoweth his VVife of this Carve, by the assent of the Father;

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the Tenant for life dieth [illegible] husband dieth, the Reversion was a Tenement in the Father, yet is this no good Assignment *ex assensu patris*, because the Father at the time of the assent had but a Reversion expectant upon a Freehold, whereof he could not have indowed his own Wife.

II. The Son and Heir apparent.

It must be such a Son and Heir apparent, as must of necessity so continue. And therefore the youngest Son and Heir apparent in Burrough-English cannot indow his Wife *ex assensu patris*, because the Father may have a younger Son then he. So of Heirs in Gavel-kind, if the Heir apparent be within the age of one and twenty, yet the Assignment is good.

III. Indoweth his Wife.

Albeit the Inheritance is in the Father, yet in respect and perpetual apparance of the Heir, the Heir apparent doth indow, and the Father doth but assent. And therefore if

the Father indoweth the VVife of his Son, that Indowment is void.

IV. **At the Church-dor.**

It may be likewise at the Monastery door, but no where else, as is shewen of *Dower ad ostium Ecclesiæ.*

V. **Of parcel of his Fathers Lands.**

He may in this, as in *Dower ad ostium Ecclesiæ*, indow his VVife of what quantity he pleaseth.

VI. **With his Fathers assent.**

An Indowment *ex assensu fratris*, or *consanguinei*, is not good, because there is no apparance of a constant and a perpetual Heir. But *ex assensu matris* is as good as *ex assensu patris*, because there is the same constant apparance of the Heir.

VII. **By Deed.**

The VVife must have a Deed of the Father to prove her assent.

VIII. **And assigns the quantity of the parcels.**

In this, as in *Dower ad ostium Ecclesiæ*, the certainty must be expressed.

The VVife having the quantity assigned,

assigned, after the death of her Husband, shall enter, albeit the Father be alive.

These Dowers for the most part ensue the nature of Dower at the Common Law. And for these the VVife may have a VVrit of Dower, albeit they be certain, as for the third part, at the Common Law.

These Dowers are good, though the VVife, at the time of the death of her Husband, be within the age of nine years.

3. *Dower de la pluis beale*; which is,

Where one is seized of twenty Acres holden in Knights-service, and as many in Socage, taketh Wife, and hath Issue, and dies, his Son within age, and the Lord enters as Guardian, and the Wife brings a Writ of Dower against the Guardian in Chivalrie, he pleading, that the Wife is Guardian in Socage; it shall be adjudged by the Court, that the Wife indow her self of the fairest of

the Tenements which she hath, as Guardian in Socage, after the value of the third part, which she claims by her Writ.

I. Where one is seized of twenty Acres.

If the Guardian in Socage have not sufficient Assets in her hands, to the value of her Dower, she may retain what she hath in part, and recover against the Guardian in Chivalrie, for part, to make up a third part.

II. And the Lord enter.

The Lord is not possessed as a Guardian, against whom a VVrit of Dower lieth, until he doth enter.

III. And the Wife brings a Writ of Dower against the Guardian in Chivalrie.

This VVrit whereby the VVife is to recover a Freehold, lieth against the Guardian in Chivalry, though he have but a Chattel; and not against the Heir, who is Tenant of the Freehold. And if the Guardian die, it shall be brought against his Executors.

IV. The

IV. The Guardian pleading.

He may plead this, or detinue, or eloigning of the body of the Ward, but he shall not plead detainment of Charters.

V. It shall be adjudged by the Court.

VVithout Judgement, Guardian in Socage cannot indow her self.

VI. That the Wife indow her self.

The VVife may take her Neighbours, and in their presence indow her self by Metes and bounds of the faireſt part of the Tenements holden in Socage, to have and to hold to her for term of life.

And under the Branches of these several Definitions, or rather Descriptions, our Student may reduce in short Rules all the Cases that he shall meet withall in the whole course of his reading touching this subject. VVhich Rules so collected, serve not only for the better knowledge of the Law, but for its use and practice. For the Law being

ing of such extent, and of so many infinite numbers of Cases, as cannot be comprehended by the capacity of Mans understanding, he must be furnished with such Rules and Propositions, whereunto he may resort for his Information in his Opinion, and be furnished with Authorities to maintain his opinion, and Clients Cause, in his course of Practice. Neither doth he deserve the name of a Lawyer, who hath not collected Precepts and Conclusions, for the decision of present and future Controversies.

Sir John Doderidge Eng. Law.

Neither in this our Students Common Place do I allow of transmitting the whole Case to its proper place; which is not only tedious and painful, but of little profit, and takes up more time then our Student can well spare. Certainly the most delightful way, and most profitable, is to reduce the whole Case to as short a Proposition, as words can bear, and so to refer it to its proper place, without troubling himself with the circumstances of the Persons, Time, and

and Place, or any other matter that is not eſſential to the concluſion drawn therefrom. And when parallel Caſes occur, one Rule ſerves; only let him add, for further Authority, the Book and Page, by which means one may run over the whole courſe of the Law in a ſmall volume, which he may with eaſe carry along with him when occaſion requires, without troubling himſelf with thoſe vaſt Volumes, only ſufficient to contain the Abridgement of all the particular Caſes, which is a labour of unſpeakable toyle, and wherein he ſhall never be free from confuſion. To adhere therefore and wholly to reſpect particular Caſes, without any obſervation of the Rules of the ſame, and to charge our Memory with infinite ſingularities, is utterly to confound the ſame, and to ingender in our ſelves that wrong Opinion, (that many have amiſſe entertained) that *there is nothing certain in our Law.* Short and refined Reaſons and Rules of long and perplexed Caſes, do through their ſoundneſs

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satisfie our Judgement, through their brevity and shortness wonderfully delight the Mind, through their pithiness they may be deemed incomparable treasures yielding a great measure of Wit, wonderfully sharpning our Understanding; of infinite use in all Affairs, containing much worth in few words, no burthen to Memory, but once obtained are ever retained.

The next thing to be observed by our Student, is, Conference about those things that he reads and writes. Reading without hearing is dark and irksome; hearing without reading is slippery and uncertain; neither of them yeild seasonable fruit, without conference. Students, saith Mr. *Fulbeck*, should not do amiss, if at certain times they meet amongst themselves, and do propose such things as they have heard or read, by that means to be assured of the opinion of others in those matters. By this means they may be brought better to understand those things, one perhaps seeing and giving

1. Ep. Coc. ad 1. rel.

Prepar. c. 5.

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a Reason, which the other is not aware of; and if he misapprehend a Point of Law, the other may instruct him therein. Hereby are they likewise brought more firmly to retain in Memory the things that they have read or heard.

Often conference and private debating of Points of Law, is of great advantage: for thereby is the Wit, the Memory, and the Tongue very much furthered and holpen, and a Man is made more ready and bold for publick Matters; and the Truth, which is the mark of study, doth more easily appear. And when the Minde by long reading is fraught with many Thoughts, the Wit and the Understanding do clarifie and break up in the communicating, and discoursing with another he tosseth his Thoughts more easily, and marshalleth them more orderly, he seeth how they look when they are turned into words. Finally, he waxeth wiser then himself, and getteth more by an hours discourse, then a dayes reading. It was well said by *Themistocles*

mistocles to the King of *Persia*, That *Speech was like cloth of Arras opened and put abroad, whereby the Imagery doth appear in figures; whereas in Thoughts they be but as in a pack.* Nay of such exceeding advantage it is, that a Man (saith the Lord *Bacon*) had better relate himself to a Statue or Picture, then to suffer his Thoughts to passe in smother: for he learneth of himself, and bringeth his own Thoughts to light, and whetteth his VVit as against a stone, which it self cuts not. *Continual poring on Books* (saith *Socrates*) *hurteth and weakneth the Memory very much:* affirming Conference to be of great use, of such use, as *Euripides* doth not stick to say, Ὁμιλία ἔστιν τέχνη, Conference and Converse was the Mother of all Sciences and Arts. And it is true that *Socrates* saith, *Learning to be sooner attained unto by the Ear in discourse and hearing, then by the Eye in continual reading.* Therefore must our Student (as Mr. *Plowden* saith was done by him) be present at all Mootes

De. aug. Scient.

Andromache,

Prolog. ad Comment.

Mootes and Readings, and to frequent all places in Court and Chancery, and to give diligent ear to the debating of Questions of Law, (by those especially that are of fame and credit in learning) chiefly of Arguments and Judgements made and given in the Kings Courts upon Demurrers in Law, and to commit those things he hears, and the Judgment thereof to writing, and not to trust slippery Memory. And certainly this hearing of the Arguments made in the Courts of Judicature, are the best means of inlightning and increasing our Students knowledge in the Law: for what he findes briefly, and perhaps obscurely delivered in a Book, he hath there fully and clearly delivered at the Bar or Bench, and most commonly illustrated by confirming it with Presidents.

Another thing to be observed by our Students, is, Meditation. And (*Meditatio est frequens cogitatio, modum, & causam, & rationem unius cujusque rei investigans.*) [Meditation

tion is a frequent cogitation, searching into the manner, cause, and reason of every thing.] He must ruminate upon, and consider of those things that he reads, according to that of the Philosopher; *Explicandus est animus, & quæcunque apud illum deposita sunt, subinde excuti debent, ut parata sint quoties usus exegerit.* [Our Minde must be unfolded, and whatsoever is laid up there shaken now and then, that they may be ready as often as occasion requires.] Without this, our pains will little avail (saith the Lord *Cook*) *Omnis perfectio ex lectione & meditatione procedit, quæ enim nescimus lectione discimus, quæ didicimus meditationibus conservamus.* [All Proficiency is from Reading and Meditation: for what we do not know, we learn by Reading; and what we learn, we retain by Meditations.] Our Reading keeps proportion with our Meats, which if it be swallowed whole, is rather a burden then nourishment. *Quod in corpore nostro videmus operari naturam,*

Seneca.

Ep. ad 1. relat.

ram, alimenta quæ accepimus quamdiu in sua qualitate perdurant, & solida innatant stomacho, oneri sunt; at cum ex eo quod erant mutata sunt, tunc demum in vires & sanguinem transeunt: Idem in illis quibus aluntur ingenia prestemus, ut quæcunque hausimus non patiamur integra esse, ne aliena sint coquamus illa, alioquin in memoriam ibunt, non in ingenium. [What we see Nature doth in the body, the nourishments that we receive as long as they remain in their own quality, and swim whole on the stomack, they are a burden; but when they are changed from what they were, then do they turn to spirits and blood: The same we must do in those things, wherewith the Understanding is nourished, that whatsoever we have swallowed we suffer not to continue whole; we must concoct them, lest they be none of ours, for else they passe into the Memory, but not into the Understanding.] They that read and write *cursim & properantes*, are like Pilgrims, who have many Hosts and few Friends; read much

much, and understand little. *Vitam in peregrinatione agentibus hoc evenit, ut multa hospitia habeant, nullas amicitias; idem accidit his qui omnia cursim & properantes transeunt.* That Meat that is presently avoided, profits not. *Non prodest cibus qui statim emittitur.* One Book well digested, is better then ten hastily slubbered over. Our Student therefore in reading must pick out some Point wherein he may meditate. *Quum multa percurreris unum excerpe quod concoquas.* And when that is sufficiently digested, he may fall to his reading again. *Certis ingeniis immorari & innutriri opportet, si velis aliquid trahere quod in animo fideliter sedant.*

Therefore after a Case read, let him consider with himself, and meditate in his Minde, to what several purposes the same Case may be applied, and what matter the Resolution of the said Case can confirm. And once meditating of a Point is not sufficient, but at his leisure he should call his Memory to account for those things committed to its charge

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some time before, and run it over again, *Altius quotidiana meditatione figendum est.* For upon the reading of a thing, to commit it to Memory without any more ado, is not the way to fasten it so as to make it our own. Therefore I will conclude with *Seneca*: *Quæ didiceris affige tibi, ita ut excidere non possunt, non enim ut memoriæ tradidisti satis.*

CHAP.

CHAP. V.

Of the Time and Place of Study.

There is a time for every thing (saith the Wise-man) and if so, there is a time for study too. Indeed every time is a time for Study. *Tempus quidem nullum est parum idoneum studio salutari.* [There is no time that is not fit for wholsome Studie.] Yet some time is fitter then another, witness the old saying, *Aurora musis amica.* For the Spirits of our Bodies, following the disposition of the Air, which in the morning at Sun-rising is subtil and thin, pure and free from all gross vapours, and our Minds being of the same condition, are quick and nimble, the Pores of the Body opened, the Humours and Spirits inlarged, which maketh us more apt for Study. And being after rest, the Spirits are stronger to incounter with difficulty and weighty

weighty matters; and after sleep the Memory is moistened with the vapours arising out of the Stomack, and so made fitter and better disposed to receive the figures of the matter conceived and apprehended. Therefore our Student must make use of the best part of the day, the morning, called by the Physicians, *The golden hours*. And those that change morning to evening, day to night, and fall to their Studies when others bid them adieu: those Antipodes of Nature, that turn night into day, *Qui officia lucis noctisque perverterunt*, do very much mistake their time. For in the night the Air is thickned and corrupted with contagious Exhalations, which possessing the Sences, do pierce into the brain, and make it cloudy and heavy. And the Spirits being spent and consumed by our motions in the day, the Body is weak and unfit for any labour. And in the night the Body waxeth more dull, so that the Minde cannot use it as a convenient Instrument. And late watchings weaken

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the vital Spirits, through too much intenſion, and exhauſt the native humidity; which made *Ovid* ſay,

Attenuunt juvenum vigilatæ corpora noctes.

And *Seneca* ſaith, *Turpis eſt qui alto ſole ſemiſomnis jacet.* And the ſame Author gives *L. Piſo* a check for this cuſtome, *Uſque in horam ſextam fere dormiebat, hoc erat ejus matutinum:* the like he doth with ſome others of the ſame practice, of whom he ſaith, *Nec ante deducunt oculos quam appetere nox cæpit*; being with them as with the Antipodes, whoſe Sun-ſetting is our riſing: *Qualis eorum conditio dicitur, quos natura, ut ait Virgilius, pedibus noſtris ſubditos è contrario poſuit.*

Moſque ubi primus equis oriens afflavit anhelis,
Illis ſera rubens accendit Lumina Veſper.

He muſt not ſtudy preſently after meat;

meat; *Non est* (saith *Seneca*) *quod post cibum studeas*, being very hurtful and destructive to the body. For saith *Lessius*, the exercises and imployments of the Mind do very much hinder and disturb the concoction, and that either because in calling up the whole force of the Soul, they do as it were abate and suspend the power and actions of the inferiour faculties, as experience sheweth; for when we are very intent on study, we neither hear the clock, nor take notice of any thing that comes before our Eyes and other Senses; or else because they do withdraw, not only the Animal, but the Vital and Natural Spirits themselves from their proper services. And after meat those vapours and fumes, which are caused by the meat taken down into the Stomack, do cloud and overshadow the clearness of the Brain, and do offend and hinder the operations of the superiour Faculties, to wit, of the Senses, the Imagination, the Understanding, and the Memory: so that he cannot

either with safety or profit study presently after meat.

And as there are hours of the day for study, so there are also of the Mind. Therefore must our Student practice all things at two times especially; the one, when the Mind is best; the other, when it is worst disposed; that by the one he may give a greater step, by the other he may work out the knots and stones of the Mind, and so make the middle times the more easie and pleasant, to fix and cherish the good hours of the Minde, and to obliterate and take out the evil. And herein he must bear over to the contrary extream, of that whereunto he is by nature inclined. He must likewise consider, that the Mind is brought to any thing better, and with more sweetness and proficience, if that whereunto he pretends be not first in the intention, but *tanquam aliud agendo*, because of the natural hatred of the Mind against necessity and constraint.

If our Student observe these Rules, he shall never think his study tedious,

tedious, but find it a Remedy against all discontent, grief, and melancholy whatsoever. Let him therefore wholly apply himself to the same, (*toto animo studere*, in *Seneca*'s phrase) and when once familiarity with, acquaints him with the advantages of Study, He shall find such pleasure and content treasured therein, that none can conceive but they that enjoy them. Witness he that said, *Siquis familiariter studium amare didicerit, & ei sæpius vacare voluerit, jucundam valde reddit vitam.*

And although every time is fit for study, yet must it not therefore take up all our time. For it is true that *Lipsius* saith, *Ingenia vegetativa* must have *suos recessus*; lively Wits must have their retrait or intermission of exercise; and as Rams (Engines of War in the ancient times) recoiled back to return with the greater force, so the mind doth unto Study after pause and rest. *Animam aliquando debemus relaxare, & quibusdam oblectamentis reficere.* We must sometimes loosen our Mindes, and with some delights Seneca.

or other refresh them. He must not be still poring on Books, for that makes him dull, and blunts the edge of the Understanding. *Neque ego te jubeo semper imminere libro aut pugillaribus, dandum & aliquod intervallum animo.* He must not sit till he can sit no longer, and have no other stage then weariness. *Sit ipsa lectio temperata, cui finem consilium, non lassitudo imponat.* And the ordering of Exercises is a matter of great consequence to hurt or help us in study. For it is well observed by *Cicero*, that Men in exercising themselves in Recreations, if they be not well advised, exercise faults withall, and get ill habits as well as good; so as there is a great judgement to be had in the use, continuance, and intermission of Exercises. Our Student therefore must use some moderate Recreations, such as do not require any long time, or labour the Mind over-much. *Exercitationes faciles & breves, quæ corpus & sine mora laxent, & tempori parcant.* [Recreations short and easie, which speedily refresh the Body, and

Seneca

Seneca.

spare

ſpare time.] His Exerciſe therefore on the one ſide muſt not be violent or laborious, for ſuch do more hurt then help the Body, very much weaken the Minde, and waſte the Spirits. *Majore corporis ſarcina animus eliditur, & minus agilis eſt, & exercitationum labor ſpiritus exhaurit, & inhabilem intentioni & ſtudiis acrioribus reddit.* Seneca. Not may they on the other ſide be looſe and effeminate; our Minde muſt be only unbent, not unſtrung; *Dandum intervallum animo, ita tamen ut non reſolvatur, ſed ut remittatur: Corpori nec nego indulgendum, ſerviendum nego.* Such Recreations as require much labour, as Wreſtling, and the like, do not become *hominem literatum*, a learned Man: *Stultum eſt enim, mi Lucilli, & minime conveniens literato viro occupatio exercendi lacertos, & dilatandi cervicem, ac latera firmandi.* Seneca. And the Lord *Bacon* Hiſt. of life and death. p. 220. ſaith, that ſuch Exerciſes are hurtful to the Body, when ſtrength is extended and ſtrained to the uttermoſt, as Dancing, Wreſtling, and ſuch-like. For it is certain, that the Spirits be-

ing driven into ſtraits, either by the ſwiftneſs of the motion, or by the ſtraining of the forces, do afterwards become more eager and predatory. Nor do I ſpeak againſt a moderate ſtirring of the Body; *Geſtatio & corpus concutit & ſtudio non officit, & mihi neceſſarium erat* (ſaith the ſame *Seneca*) *concutere corpus, ut ſi aliqua cauſa ſpiritus denſior erat, extenuaret illum jactatio, quam profuiſſe mihi ſenſi.* And the ſame Lord *Bacon* ſaith, that Exerciſes which ſtir up a good ſtrong motion, but not overſwift, or to our utmoſt ſtrength, as Shooting, Leaping, Riding, Bowling, and the like, do not hurt, but rather benefit. Seneca.

Recreations (ſaith *Cauſin*) the moſt innocent are ever the moſt commendable; and if ſo, certainly Shooting, Bowling, and Angling, are moſt worthy his exerciſe. The firſt is uſeful both in Peace and War, an honeſt paſtime for the Minde, and a wholſome Exerciſe for the body. It provides Meat for the Stomack, and Stomack for Meat. It is the ancienteſt of any,

any, as ancient as *Cain*, whom some say *Lamech* killed with a Shaft. Anciently practised by Kings and Emperours, witness *Xenophon*, who saith, that *Cyaxares* King of the *Medes*, *Astyages* his Son, *Cyrus* and *Darius*, were skilful in this Art; nay the latter was so taken with it, that he caused to be ingraved on his Monument, that he was exquisite in Shooting. *Domitian* the Emperour was so cunning therein, that he would shoot betwixt a mans fingers standing at a distance. It is a quiet and harmless Exercise; yet doth it well deserve the name of Exercise, for it both increaseth strength, and most preserveth health, being not violent, but moderate; not overlaying any one part with weariness, but equally exercising every part of the Body. Shooting (saith the Lord *Bacon*) is good for the Lungs and Breast. In a word, it is the only Recreation allowable in our Law; and being a lawful Recreation, is the most worthy of a Lawyers practice.

Bowling (saith the same Lord *Bacon*)

con) is good for the Stone and Reins; and those that lead sedentary lives, as Students do, are most subject to these Diseases; therefore doth in a manner injoyn our Students exercise thereof, *periculo incumbentis*. It is an Instructor of the Mathematicks, an innocent Recreation, doth moderately refresh the Body, and very much quicken and sharpen the Understanding.

Angling, the last, but not the worst of the three, is a Recreation, though tedious to some, yet full of pleasure and delight to others; and this is of ancient standing too. Of its innocence there is no question, our Saviour himself being often present when the Apostles used the same. And if you believe *Plutarch*, *Mark Anthony* amidst his wonderful glory used Angling as a principal Recreation. So harmless a Recreation, that it is allowed to Clergy-men, being a Recreation that invites to Contemplation and quietness, and used by them accordingly: witness Doctor *Whittaker*, Mr. *Nowell*, and Mr. *Perkins*:

kins: Sir *Henry Wotton* ſaith, That after tedious ſtudy, it was a reſt to his Minde, a clearer of his Spirits, a diverſion of ſadneſs, a calmer of unquiet thoughts, a moderator of paſſions, a procurer of contentedneſs, and it begets habits of peace and patience, in thoſe that practice it. It is a Recreation that doth not at all take up the Minde, but gives it liberty for any contemplation, therefore moſt befitting a Student; witneſs that Angler that ſaid.

My hand alone my work can do.
So I can fiſh and ſtudy too.

But let not Recreation get ſo much ground upon him, as to make him forget it is but a Recreation; let him not ſpend too much time therein, but after ſome ſhort while return to his ſtudy a gain; following *Seneca*'s advice, who ſaith, *Quicquid facies, cito redi à corpore ad animum, illum diebus ac noctibus exerce, labore modico alitur ille.* [Whatſoever thou doſt, make a ſpeedy return from the Body

to

ro the Minde: exercise this day and night; for it is nourished with moderate labour, and refreshed with short Recreations.]

Ad studium multum confert locus, saith *Seneca*. [The place is a great furtherance to study] therefore it will not be amiss to add somewhat concerning it. And that must be somewhere apart, where quiet and silence are not interrupted. *Necessarium est silentium ad studia seposita*. For where noise disturbs his busied thoughts, and puts him behindhand with himself, he cannot expect any solid progress in his Studies, unless he be such as *Seneca* speaks of, *Cui mens inter clamatores tam varios, tam dissonos constat*; but *ad hoc tarde pervenitur*, this is hardly attained to, saith he, not till he be such a one as this *Seneca* wished his *Lucilius*: *Tunc tè scito esse compositum, cum ad te nullus clamor pertinebit, cum te nulla vox tibi excutiet.* [Know thee then to be composed, when no noise belongs to thee, when no cry can shake thee out of thy self.] Whence may be con-

concluded, that Cities and places of confluence are offensive to study: for the noises, cries, and tones that fill every corner, *Librarii varias exclamationes, & botularum & crustularium, & omnes popinarum institores, merces suas quadam & insignita modulatione vendentes*, will distract and confound his thoughts, and perhaps when most intent upon the most difficult business. This made Sir *John Forteſcue* commend the situation of the Innes of Courts; for saith he, This place of study is not situate within the City, *Ubi confluentium turba studentium quietem perturbare possit.* And certainly the thick vapours compassing Cities, make the air about them dull and foggy, which must needs have a great influence upon the Brain, and consequently the Understanding too. All which Inconveniencies are avoided in the Country, where the air is sharp and piercing, places quiet and silent, excellent walks, the comfort whereof, together with the fragrancy of the Flowers and Herbs, do much add to

and

De leg. l. 2 and ſupply the waſted Spirits. *Cicero* was much taken with this, when he ſaid, *Illo loco libentiſſime ſoleo uti, ſive quid mecum ipſe cogito, ſive aliquid ſcribo, aut lego, hoc vero nihil eſt amœnius.*

Stand.

FINIS.